

EXHIBIT

A

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

Plaintiff

VS.

Defendants.

- CV -

Affirmation in  
SUPPORT of affirmed  
Verified Complaint

I, Dennis Bell #03R4363 being duly sworn,  
do hereby affirm Pursuant to the Penalties  
of Perjury under the LAWS of united states of  
america, and the most high God, that the Following  
is true and accurate:

1. I am the above affirmant making this  
affirmation in support of the affirmed  
Verified Complaint.

2. I am a PRISONER being held under the Custody  
and in the CARE of the Department of Corrections  
and Community Supervision at Southport  
Correctional Facility.

3. I make this affirmation on my own free will,  
and ask nothing from this Court, OR the Plaintiff  
in exchange for my sworn testimony.

4. On or about SEPT, 23, 2013, I was an inmate  
housing at Southport in C-block

On eleven Company when I formally met the Plaintiff MR. MARCUS King.

5. Myself and MR. King began to socialize and share Religious Ideals. MR. King expressed he was a Muslim currently Registered as a member of the Nation of Islam. At that Point an Inmate a short distance away from us, began to yell disrespectful things to us about muslims. When we didn't Response He yelled "don't worry I'll get you Racist son of a Bitches..."

6. I did not take his threat serious, until the following day he stopped a Correctional Guard named Luis Tillighast, who is known as an extremist in harassing inmates he didn't like, including stooping to squeezing their Butts & saying sexual things.

7. On or about SEPT, 30, 2013, Luis Tillighast did Patfrisk MR. King on the unit, and as I watched him through a small Piece of mirror he fondled & squeezed King's Penis saying something about knowing gay muslims. MARCUS King became hostile & began to Curse which angered MR. Tillighast, who then stated, "okay you want to Play it that way, I got you..."

8. On or about October, 8<sup>th</sup>, 2013, Superintendent Stephen Wenderlich made Routine Rounds and was stopped by myself, and Marcus King. I was told about Luis Tillighast giving Orders to his informant to yell Curses at us while we Prayed. as well as about him fondling & Squeezing MR. King's Penis Making Improper Sexual Comments.

9. After being made aware by MR. King of the Problem with Guard Tillighast, Superintendent Wenderlich became belligerent violently stating. "I've been told this already... We've investigated him several & none of these sexual allegations have been substantiated." When MR. King Replied "Claims are almost always investigated by a Friend of this Guard that is why... why does no one ever review the video cameras". The Superintendent Replied, "I'm tired of Investigating & dealing with Complaints about this Officers. My Officers just wouldn't do anything like this."

10. On or about OCT, 10, 2013, Guard Tillighast did approach Marcus King at Shower with another Guard whom I could not identify. They Ordered him to step in for a search/patfrisk. When MR. King asked what this was about, Tillighast told him you went & Complained about me to the Superintendent, & told him I was gay.



11. The next thing I heard was Marcus King being Roughed up in the Shower ~~area~~ by the two Guards, With more Guards & a Sergeant Belz Running into his cell to search it.

12. loud screams & thumping sounds could be heard from the showers. The sounds of Guards Assaulting MR. King Caused myself, & Other inmates to yell for them to get off of him. and hopefully Bring so Other higher Ranking Personnel to take charge of the situation.

13. I declare the above to be true to the best of my knowledge, and if needed, I will testify under oath in open court to each of the stated facts. as I would've testified to this at Tier III hearing if allowed to.

DATE: April 3 2014  
Pine city, New York 14871

Respectfully sub  
Dennis Bell #03R4363  
-signaturer -

EXHIBIT

B

United States District Court  
Western District of New York

Plaintiff  
vs

Defendants

- CV -  
Affirmation in  
support of affirmed  
verified complaint

I, Cornelius Dedder #0132658, being duly sworn does hereby affirm pursuant to the penalties of perjury under the laws of United States of America, and the most high God, that the following is true and accurate:

1. I am the above affiant making this affirmation in support of the affirmed verified complaint.
2. I am a prisoner being held under the custody and in the care of the Department of Corrections and community supervision at Southport Correctional Facility.
3. I make this affirmation on my own free will and of sound mind and ask nothing from this court or the plaintiff in exchange for my sworn testimony.
4. On or about January 10, 2014, I was an inmate housing at Southport in A-block on seven company when I met an inmate named Marcus King.

5. I began to socialize with the plaintiff a couple days after he moved into eleven cell, which was exactly next door to me, as I resided in ten cell. We realized at that time we shared the same religious beliefs as black Muslims.

6. On or about January, 2011, as we were going through our daily reading of the Glorious Quran a Correctional guard approached Mr. King's cell to serve him a misbehavior report.

7. At that time I introduced myself to the serving officer believing I may be able to assist Mr. King in preparing his defense. I advised the plaintiff Marcus King to request an assistant from the inmate disciplinary worksheet provided to him by the guard Cook. The guard became belligerent getting upset, he began to berate Mr. King saying "Tell your fuckin' buddie over here to mind his own business, he's not a lawyer... and it doesn't matter no way, the hearing officer we selected for you is one of our boys, you have no chance!"

8. In spite of all the things that was stated by Cook the serving guard Marcus King followed my advice and selected an assistant from the list. On January 14, 2011 Marcus King's selected inmate assistant did show up to his cell to take all of his request.



9. Almost immediately after the assistant had shown up and questioned Marcus King in depth in regards to his retaliation defense. Several guards each day during recreation run continued to walk up to Mr. King's cell and pound on the gate yelling threats that they were going to give him a new prison case — or beat him if he went to his hearing and allege that Louis Tillighast did anything sexual to him. These threats were so constant and violent I was afraid for him as well as myself at this time. I did inform Marcus King to write to the inspector general's office and tell them what was going on.

10. When his grievances and letters complaining about the guards' actions began to be investigated I overheard Sergeant Belz tell Mr. King that if he attend his tier hearing that what had transpired before is going to happen again but the difference with this time is that he may not be able to sit down or walk for awhile... at that time I learned a correctional guard had stuck his finger inside Marking's rectum and made sexual innuendos to him.

11. ON January 23, 2014 I observed an escort guard kick Marcus King's cell door, he then yelled at him "you suppose to go to a hearing but I know your not dumb enough to make us have to do more paper work on you". Another guard came to join in saying "you going coward?" He also spoke about Marcus King getting a new charge and a longer stint back in the dungeons which is known as D-block which is an enhanced restraint box or a "box ~~with~~ a box" for prisoners

who are targeted or labeled trouble makers by Southport Correctional guards.

12. These guards went and told the hearing officer that Marcus King refused to attend the hearing although they knew this was a lie. Marcus King and I began to rattle our gates and call for the hearing officer to come down to our cells and speak to us himself so we could advise him of what was going on.

13. This hearing officer heard our voices calling for him but instead of coming down to us he stopped at the head of the company and spoke to the guards. A moment later he walked off and never returned to speak to me or Mr. King about the actions of the guards. Mr. King was later given a written decision from the hearing officer alleging he refused to appear at the tier hearing, and was guilty of the penalties lodged against him.

14. I personally observed all of the aforementioned actions transpire and will testify in open court under oath to all of the above.

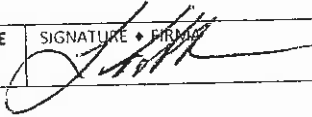
Dated: April 10, 2014  
Pine City, NY 14871

Casimir Redden

EXHIBIT  
C

Southport Correctional Facility

INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre) King, Marcus		NO. ♦ NÚM. 12A1122	HOUSING LOCATION ♦ CELDA C-11-19
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE C Block, 3rd floor, 11 Gallery, 3 Shower		INCIDENT DATE ♦ FECHA 10 October 2013	INCIDENT TIME ♦ HORA Approx 11:15 am
3. RULE VIOLATION(S) ♦ VIOLACIÓN/ES 113.10 Weapon 114.10 Smuggling			
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE On the above date and time while conducting a pat frisk of inmate King (12A1122), I felt an unusual bulge in the inmate's rectal area. The area supervisor authorized a strip frisk. The inmate was moved to the number 3 shower on C11 gallery and I conducted a strip frisk. During the strip frisk I saw a white package between the inmate's buttocks. I had the inmate remove the package with his left hand. Inmate King complied with my order and handed the package back to me. I recovered the package and completed the strip frisk. I searched the package and found a small folded piece of paper that contained green leafy material. I turned that material over to CO J. Robinson for testing. Also in the package was a ceramic razor type weapon. The razor was white in color and approximately 1 ½ inches long by 3/8 inch wide. The razor weapon was wrapped in paper and tape that was constructed as a holster and handle. The inmate was moved to D-M-33 without further incident. Photos taken and copies made, the original evidence was secured per directive 4910a.			
REPORT DATE ♦ FECHA 10-10-2013		REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME L. Tillinghast	
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESS (if any) ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay)		SIGNATURE ♦ FIRMA  SIGNATURES: FIRMAS: 1. _____ 2. _____ 3. _____	
TITLE ♦ TÍTULO CO			

NOTE: Fold back Page 2 on dotted line before completing below.

DATE AND TIME SERVED UPON INMATE  
FECHA Y HORA DADO AL RECLUSO

NAME AND TITLE OF SERVER  
NOMBRE Y TÍTULO DEL QUE ENTREGA

You are hereby advised that no statement made by you in response to the charges or information derived therefrom may be used against you in a criminal proceeding. ♦ Por este medio se le informa que no se puede usar ninguna declaración hecha por usted como respuesta al cargo o la información derivada de ella en una demanda criminal.

NOTICE ♦ AVISO

REVIEWING OFFICER (DETACH BELOW FOR VIOLATION HEARING ONLY)

You are hereby notified that the above report is a formal charge and will be considered and determined at a hearing to be held. ♦ Por este medio se le notifica que el informe anterior es un cargo formal el cual se considerará y determinará en una audiencia a celebrarse.

The inmate shall be permitted to call witnesses provided that so doing does not jeopardize institutional safety or correctional goals. ♦ Se le permitirá al recluso llamar testigos con tal de que al hacerlo no pondrá en peligro la seguridad de la institución o los objetivos del Departamento.

If restricted pending a hearing for this misbehavior report, you may write to the Deputy Superintendent for Security or his/her designee prior to the hearing to make a statement on the need for continued prehearing confinement. ♦ Si está restringido pendiente a una audiencia por este informe de mal comportamiento, puede escribirle al Diputado del Superintendente para Seguridad o su representante antes de la audiencia para que haga una declaración acerca de la necesidad de continuar bajo confinamiento, previo a la audiencia.

Distribution: WHITE - Disciplinary Office CANARY - Inmate (After review) ♦ Distribucion: BLANCA - Oficina Disciplinaria AMARILLA - Recluso (despues de la resion)

EXHIBIT

D



Southport Correctional Facility

INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre) King, Marcus		NO. ♦ NUM. 12A1122	HOUSING LOCATION ♦ CELDA C-11-19
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE Drug Testing Room		INCIDENT DATE ♦ FECHA 10/10/13	INCIDENT TIME ♦ HORA 2:00pm
3. RULE VIOLATION(S) ♦ VIOLACIÓN/ES 113.25 An inmate shall not possess any narcotic or controlled substance or marijuana			
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE On 10/10/13 at 1:15pm I, co J. Robinson, received a green leafy substance from c.o. Tillinghast that he found on inmate King 12A1122. I took the substance to the drug testing room to be tested. I weighed the substance and the amount was 0.2 grams. I then took photos of the substance. I, c.o. J. Robinson, then tested the substance using NIK test kit E were a Purple blue-violet color developed indicating the presence of Marijuana. At 2:00 pm after using the NIK Polytesting System it was determined that the substance material is in fact Marijuana. There was no substance left after testing.			
REPORT DATE ♦ FECHA 10/10/13		REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME J. Robinson	
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESS (if any) ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay)		SIGNATURE ♦ FIRMA C.O. J. Robinson	
SIGNATURES: FIRMAS:		TITLE ♦ TÍTULO C.O.	

NOTE: Fold back Page 2 on dotted line before completing below.

DATE AND TIME SERVED UPON INMATE \_\_\_\_\_ NAME AND TITLE OF SERVER \_\_\_\_\_  
FECHA Y HORA DADO AL RECLUSO \_\_\_\_\_ NOMBRE Y TÍTULO DEL QUE ENTREGA \_\_\_\_\_

You are hereby advised that no statement made by you in response to the charges or information derived therefrom may be used against you in a criminal proceeding. ♦ Por este medio se le informa que no se puede usar ninguna declaración hecha por usted como respuesta al cargo o la información derivada de ella en una demanda criminal.

NOTICE ♦ AVISO

REVIEWING OFFICER (DETACH BELOW FOR VIOLATION HEARING ONLY)

You are hereby notified that the above report is a formal charge and will be considered and determined at a hearing to be held. ♦ Por este medio se le notifica que el informe anterior es un cargo formal el cual se considerará y determinará en una audiencia a celebrarse.

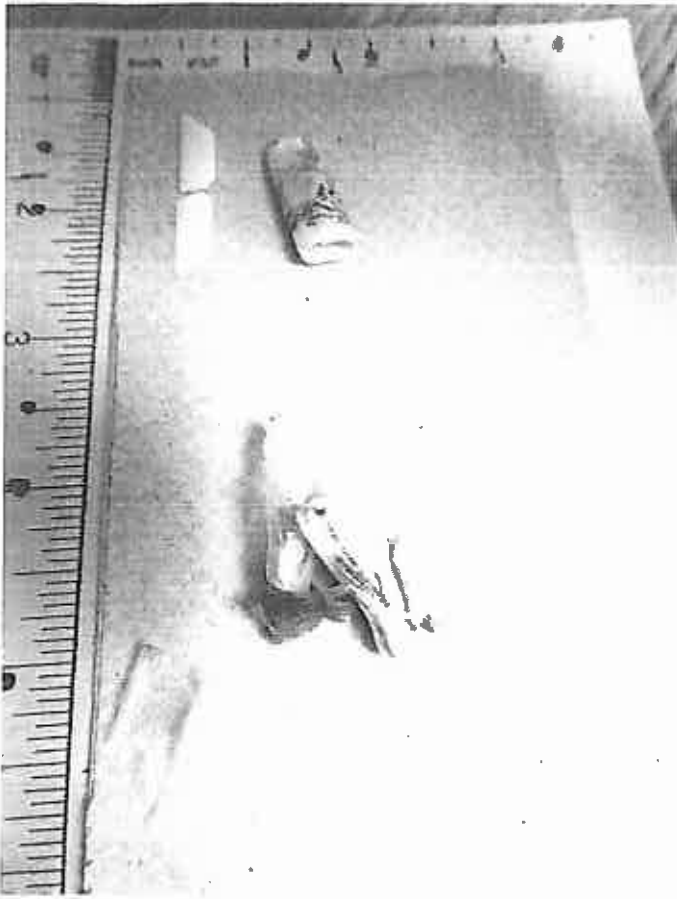
The inmate shall be permitted to call witnesses provided that so doing does not jeopardize institutional safety or correctional goals. ♦ Se le permitirá al recluso llamar testigos con tal de que al hacerlo no pondrá en peligro la seguridad de la institución o los objetivos del Departamento.

If restricted pending a hearing for this misbehavior report, you may write to the Deputy Superintendent for Security or his/her designee prior to the hearing to make a statement on the need for continued prehearing confinement. ♦ Si está restringido pendiente a una audiencia por este informe de mal comportamiento, puede escribirle al Diputado del Superintendente para Seguridad o su representante antes de la audiencia para que haga una declaración acerca de la necesidad de continuar bajo confinamiento, previo a la audiencia.

Distribution: WHITE - Disciplinary Office CANARY - Inmate (After review) ♦ Distribucion: BLANCA - Oficina Disciplinaria AMARILLA - Recluso (después de la resion)

EXHIBIT

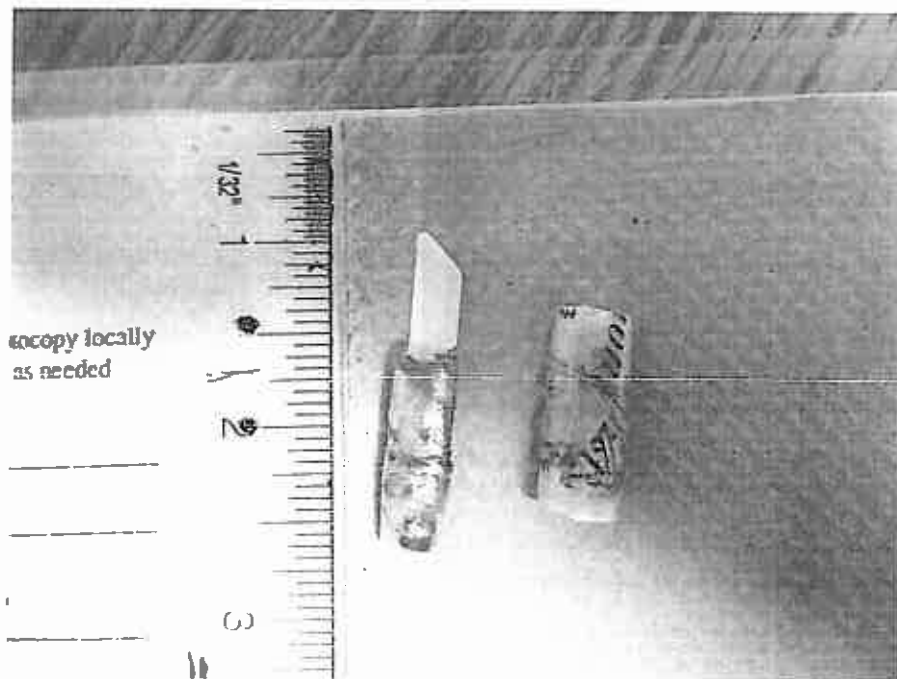
E



**UI# 13-0055 10-10-13 11:15 AM**



**INMATE KING, M. 12A1122 C-11-19**



**PHOTOS BY C.O. TILLINGHAST**

Contraband/Evidence Photograph Card

Item Description: Green 100g subsonic

Date/Time Found by: 10/06/14 J. King

Facility Contraband/Evidence Control #: 134444111 DIN #: 2291122

Human Name: King

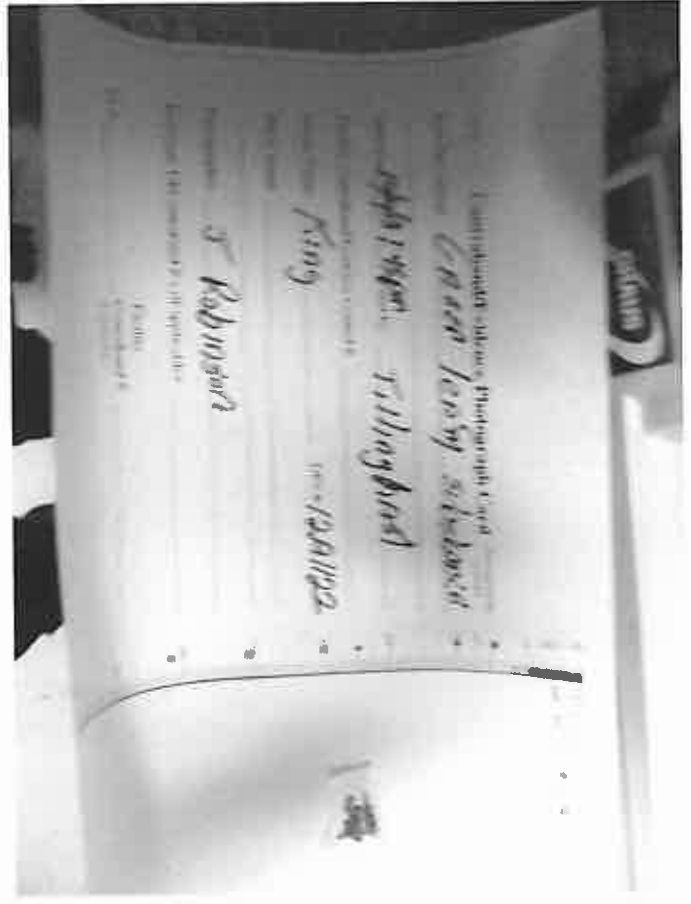
Where found: \_\_\_\_\_

Photographer: J. Robinson

Electronic EUC Contraband #'s (if applicable): \_\_\_\_\_

Facility Contraband #: \_\_\_\_\_

EUC: \_\_\_\_\_



EXHIBIT

F



Page 13-449

- *Handwritten Answer:*  $\frac{1}{2} \ln 2$

Planch. Nat. 1794-1800

Date of issue: 10/11/18

Book of your own's reflection

[illegible]

Please the following Personalize your own correct During My Learning:

Department of Agriculture

\_\_\_\_\_

My Due paper was violated about 7.0.9.0. In 8.0.4.2. I provided  
My (C.A) 3rd Paper as further request for And no. 2 since selection time  
would change because that I specially want to be a 3rd Paper like the  
Horse which is a 3rd year or subject. Below are copy of U.S. reports.  
All 7/10/10 related to incident, please stop it from "H.C. and

D. r. a. l. Alpensis

Upon telling female witnesses Madeline, on 12/29/24 on p. 1, that it was not a man I heard on my cell, I said he should be not a part of my educational goals. Both witnesses have not allowed to testify on my Miranda. On 12/29/24, I attended a court opportunity to present evidence. To ensure fairness, the report to both witnesses are:

Notes V-12210, 12-29-24, 12-29-24, 12-29-24  
12-29-24. I promptly informed (11:0) that I would answer questions

I made below a list of birds seen at the bird house during  
my last week of incubation. These purchases did not belong to the bird's progress.  
behaviour. I had to keep up and was not a good old student. I hope to see  
Leucosticte v. hypoleuca, 1911, 1912, 1913, 1914, 1915.

[illegible]

Pls. I requested in your separate document that my legal co. should  
be sent a bill at the hearing of my 1st. 12. 1. 1998. I want 2) Confirmation  
of having a 2d. who has not adjustment or hearing. During the hearing of Sept.  
1992 who asked the court to be removed a number of my personal debt was  
also to alleged confidential transaction be removed. You are hearing

The work up to the 19th of June was finished also having  
been done by the same person & equipment. That work was done in a  
20 ft. square of the same size. On the 19th of June and on  
the 20th of June the work was finished on the 19th of June and on  
the 20th of June.

The record shows that no record received on the date  
of the denial of my request of financial aid and assistance in  
the technical preparation. Thus violating my due process of government.  
Permitted to 7 m.p.h. in a 20 m.p.h. zone. In fact in the case, the  
perpetrating due process violations. I quote the Amendment to Justice International  
see Shannon v. Harris, 1972, et seq. 24 A. 2d 261

[illegible]



7. Record

[illegible]

La muestra de la población



11/11/11

April 1, 1900

- viele Erfahrungen, die zeigen

reality, by the time

Feb. 10/10

1. The human digestive system

## Experimental approach

[illegible]

Dear Mr. Frank

Prayer Book United ...

important that - and vice versa - is a solid support. That, by a good  
solid support, I mean respect for opponent's  
in an effort to achieve that.

I am sure that a representative report and argument  
in the ground that I have built gently is a first class report  
written by Dr. J. Robinson for allegedly receiving a great body  
of evidence that has been taken to him by others. It was the chance  
to have received the substance from my person. The Robinson report  
written by Dr. J. Robinson failed to provide me with adequate  
evidence of the charge to enable me to prepare a meaningful  
defense as it was not delivered to the lady or her report the  
actual basis for the charge with enough particularity to enable  
me to identify and Marshall's account to prepare an actual  
defense.

[illegible]

In addition



2nd  
appeal

Reinstatement appeal letter

I am the person being

Disciplined by the

Disciplinary Hearing

Allegation: Drug Possession

Manuscript

Dear Sir,

I am writing appealing to the Determination of the Disciplinary Hearing's hearing.

Hearing date: 1/23/14 and 1/24/14

Date of Disposition: 1/24/14

Date of incident: 10/10/13

Disposition received: 6 months recommended loss of good time, 3 months loss of phone, commissary, packages, 3 months loss of all visitation and 3 months confinement to 3 floor. In accordance with section 2.4.8 of title 1, N.Y.C.C.R., I request that you review and reverse my superintendent's hearing. The hearing commenced on 1/23/14 at 2:00 pm and I was unlawfully deprived of the right to appear at my hearing, offer a defense and comment on the charges and evidence. I was found guilty of the charges: 113.10 Weapon and 114.10 Saucy behavior in a letter signed by C.O. J. Tillingsworth and Charge: 113.25 Drug possession in a letter signed by C.O. J. Robinson. The following witnesses testified: Sgt. Sprights on 1/23/14, C.O. Robinson and C.O. Tillingsworth both on 1/24/14.

### Statement of Facts

On 10/10/13 while lawfully housed in a block 3rd floor 11 gallery located in Southport, I was escorted to scheduled facility shower. I was met by C.O. J. Tillingsworth and C.O. Kelly at the entrance of #3 shower. I was given a direct to knee the back of the shower wall. I complied and was hit, struck and

punctured about the facial and torso was causing me to sustain a chipped tooth. Disfigurement of my upper right hand tooth and other injuries. I was directed to lift my leg one at a time so that both above mentioned officers can remove my underwear so that C.O. Tillinghast can perform an illegal and unlawful "Body Cavity Search". C.O. Tillinghast Forcefully shoved his finger(s) inside my rectal cavity in which according to directive #14910 called a search for contraband Section (11) 2 Authorization @ "a body cavity search shall be conducted by a facility physician under central office physician guidance". The operative parts of C.O. Tillinghast Report alleges "On the above date and time while conducting a pat frisk of inmate King (1211122), I felt an unusual bulge in the inmates rectal area". C.O. Tillinghast goes on and states in this same Report "During the strip frisk I saw a white package between the inmates buttocks". This Report is false, incredible and does not coincide with ordinary human experiences! There's possibly no way C.O. Tillinghast would've ever been able to feel a bulge between my rectal area during a "pat frisk" while only being clothed with just underwear unless C.O. Tillinghast indeed conducted an illegal body cavity search and forcefully stuck his hands into my private areas while I was still mechanically restrained in the shower! After, I was immediately escorted to the isolation drug/contraband watch room by these (2) officers and stripped of my clothing and placed in D.M.-33 cell where I was compelled to provide Detention samples for 7 days in which were negative for any contraband. As of such occurrence I was subsequently "set up" with the above mentioned charge I was retaliated against and falsely accused of charges that stem from a Quarrel that took place a week prior to the incident date of 10/10/13 between myself and C.O. Tillinghast. C.O. Tillinghast Deprived me of my right to participate in daily recreation without any reason in which lead up to an exchange of words I was then threatened and told that he'll "come back and get me". In attempt to substantiate my claims I requested witnesses on my behalf and recreation log that prove C.O. Tillinghast had recreation rest and that I in fact requested recreation but wasn't



violated this Constitutional Right.

I believe that the following procedural violations occurred during my hearing:

Misbehavior Report Lack Specification

Of the particulars authored by C.O. Robinson

Fundamentally, 7 N.J.C.R.R. § 251-3.1(c)(1) provide that "the misbehavior report shall include the following... a written specification of the particulars of the alleged incident of misbehavior report involved. The misbehavior report must describe with specificity an incident which the author claims to have witnessed and the rules alleged violated; see Kyran V. Caughlin, 77 N.J. 2d 642 (Ct. app. 1991) and see Mohit Rahemt V. Mann, 55 N.J. 2d 113 (Ct. app. 1995)

I am challenging the insufficient notice of charges as to the charge of possession of Marijuana. I was found guilty of a (N.J.C.R.) written by C.O. Robinson for allegedly possessing a green leafy substance that was handed to him by Co. Tillinghast who alleges to have recovered such substance from my person. The (N.J.C.R.) written by Co. Robinson failed to provide me with adequate notice of the charges to enable me to prepare a meaningful defense as it was not detailed in the body of the report the factual basis for the charge with enough particularity to enable me to identify and marshal pertinent facts to prepare an effective defense.

The (N.J.C.R.) listed the location of the incident as the "Drug Testing Room" with my name and numbers placed in a designated line on the top of the report.

The report failed to establish also the connection between me and the substance. The (N.J.C.R.) written by Co. Robinson omitted (A) Time of incident (B) place of incident (C) Date of incident. Much the report date and time of incident exclusively referred to when Co. Robinson received the substance and when he operated the drug testing machine and finally, (D) The record clearly reflects in a prior hearing, proceeding that upon cross examination Co. Robinson never ascertained the facts of the incident whatsoever, nor was he present or observed the incident.

7, N.Y.C.R.R. § 251-3.1(d) section of the regulation provides that "The (MER) must set forth the date, time and place of the offense. The Disciplinary rule alleged, violated and the factual basis for the charge with enough particularity, (details), to enable the inmate to prepare a defense". With the above in mind the hearing officer and Co. Robinson clearly violated my Due Process Rights. An appellate issue in the matter of Simmons v. Fischer, 963 N.Y.S.2d 1609 (2d Dept 2013) also citing matter of Flakeen v. Corbin, 650 N.Y.S.2d 819 (3d Dept 1996). The court annulled the Determination of guilt and Ordered all references to the charges expunged from petitioner's institutional records.

Additionally, pursuant to 7, N.Y.C.R.R. § 251-3.1(b) and (c)(3) Misbehavior Report; (D) The MER shall be made by the employee who has observed the incident or who has ascertained the facts of incident (c)(3) The MER shall include the following: The Date, Time and place of the incident

In prior hearing proceeding Co. J. Robinson testified a record that he did not observe the incident; see Harold v. Coughlin, 190 N.D.2d 1090 (4th Dept 1993) (The appellate Division held the Misbehavior Report that incorrectly identified date of incident and thus ~~disproving~~ did not comply with Regulation requiring the Report to include date of incident and thus disciplinary Determination was properly annulled) Davis v. Coughlin, 200 N.D. 904 (3d Dept 1997) (The Third Dept held that MER did not comply with T.N.Y.C.R.R. 251-3.1(c)(2) because it failed to state date and Time or even Period within which inmate allegedly interfered with employee, verbally harassed employee and made false statements and should have been annulled)

The Regulation Requiring the MER to include the specific Time and Location of the incident is designed to safeguard an inmate's Due process right to advance notice of the alleged violation... The Report must be sufficiently detailed to afford an opportunity for preparing a defense; Meekins v. Lefevre, 98 N.D.2d 566, 568.; Wolff v. McDonnell 418 U.S. 539 (1974)

In furtherance, New York State D.O.C.S has promulgated in T.N.Y.C.R.P.



§ 10.10.5 which governs the use of such Test Results and set forth the specific Documents that must be made part of the record at the Disciplinary hearing:

(A) The request for test of suspected Contraband Drug form (B) The Contraband Test procedure form (C) The test report prepared by and a side agency subsequent to testing of the substance; if any (D) A statement of the scientific principals and validity of the testing materials and procedures used (E) A photocopy of the individual Test Test instructions for each test used.

Here, the hearing officer D.S.S. Lannanna Reveals in his Disposition a statement of the scientific principals and validity of the testing materials and procedures used or the photocopy of the individual test instructions for any test used was not provided to me nor were they made apart of the hearing record. A proper foundation was not laid and that proper testing procedures were not allowed; see Booker v. Lencole, 72 A.D. 3d 1369 (3d Dept 2010) (no proper foundation was established for an admission of the positive NIK test result. where no statement of the scientific principals and validity of the testing materials and procedures used was admitted into evidence at the hearing or provided to the inmate and there was no testimonial evidence of the procedures used by the testing officer) see also Amigo v. Lencole, 44 A.D. 3d 1006 (2d Dept 2007).

### Presence at hearing Denied

T.N.Y.C.R.R. 254.6 (A)(2) provided that "the inmate shall be present at the hearing, unless he or she refuses to attend, or is Excluded for reasons of institutional safety or correctional goals". An inmate has a fundamental right to be present at his or her Disciplinary hearing Rush v. Guard, 770 N.Y.S. 2d 191. unless he or she Waives such right or refuses to attend. Here, I did not refuse or Waive my right to attend my hearing nor was I a threat to the institutional safety or correctional goals. I've attended and participated in prior hearings and continue participating in the matter and in

Requested Employee assistance for this Re hearing.

The hearing officer stated when he did not make any (H.O.s) to ascertain whether or not I actually refused to attend the hearing. Nor did he attempt to make any inquiry to determine if I willfully refused to attend the hearing as he alleges in his Disposition. In fact I never asked if I wanted to attend such by hearing by C.O. Johnson or Sgt. Sprights as alleged in the Disposition created by (H.O.) D.S.S. Lamanna. (H.O.) alleges in his Disposition that (a) I failed to give any reasons for not attending and (b) alleges that he "personally" spoke with me at my cell regarding my refusal and still failed to state the reason for why I allegedly "waived" my right to attend after he "personally" spoke with me, is because this alleged communication NEVER happened!!! (Why would I refuse to attend my hearing after I've participated in every part of the proceeding???)

Furthermore, if an inmate refuses to attend his hearing, he must be advised of the consequences for his failure to attend (such as the hearing will continue in his absence). See *Talar, v. Selsky*, 26 N.Y.S.2d 306 (3d Dept 2007) "Without evidence that petitioner was so advised, the record does not establish that [he] knowingly and voluntarily waived his right to attend and the (H.O.) should not have held the hearing in his absence". It is clear that my Due Process right provided in 1 N.Y.C.R.R. § 101.6 (a)(2) to attend my hearing was violated and such hearing Disposition created by H.O. must be reversed and expunged from my institutional record. I was not provided an opportunity to sign a hearing refusal form... H.O. never personally communicated with me concerning this alleged refusal and I did not make a knowingly, voluntarily and intelligently waiver of my right to attend hearing.

Deprived of adequate  
Employee assistance

T.N.Y.C.R.R. § 101.6 (a)(2) with



Inmate charged, to explain the charges to the inmate, interview witnesses and to report the results of his efforts to the inmate. He may assist the inmate in obtaining Documentary Evidence or written statements which may be necessary"... then, I provided my employee assistant Sgt. Chapman with a written request to provide me with up to (5) requests including a copy of the unusual incident report, Recreation Log, Tapes witnesses, To interview witnesses and all of them forms. To this request, my (L.N) refused to provide me with any Documentary Evidence. Returning back to me a copy of my written request of assistance written in his hand writing in Red Ink stating the reasons for why my requests are being denied.

My (L.N) assistant told me that he not interviewing anyone and that I have already received requested documents previously at another hearing proceeding. I've explained to my (L.N) that upon being moved to the New cell location within the facility I've lost those requested documents in the process of moving, and that I have never received certain documents. Nothing in the record will reflect that my (L.N) interviewed any of the indicated witnesses or provided me with any requested documents. In fact, it is evident that I've refused to sign the (F.A) form acknowledging that my assistance assisted as requested and satisfactory. As a matter of law in the matter of Eng v. Englin, 858 F.2d 594 598 (9th Cir. 1988). The court held in its Jurisprudence that prison authorities have a constitutional obligation to provide assistance to the inmate in gathering Evidence, obtaining Documents and relevant Tapes and interviewing witnesses.

With the above in mind, my Due process Rights under T.N.P.C.R.C. § 254 4.2 was violated. Further, the court held that the inadequate assistance had impaired the petitioner's ability to present a defense, Annulled the hearing and ordered that all references to the charges be expunged from petitioner's records. See Canty v. Fischer, 946 N.Y.S.2d 744 (2013 3d Dept)

### Timeliness

Subdivision (b) of 7 N.Y.C.R.R. 251.5.1 provides that "the disciplinary hearing or superintendent's hearing must be completed within 14 days following the filing of the Misbehavior Report unless otherwise authorized by the Commissioner or his designee". It is also noted to all superintendents indicating that a rehearing is to be conducted within the same time frame as an initial hearing, pursuant to 7 N.Y.C.R.R. 251.5.1(b). Here, the record indicates that the Facility Superintendent of Southport C.F. received notice <sup>from</sup> the Director for special housing, Mr. Albert Prack, ordering a new hearing at least on January 9, 2014 and so ordered that the hearing be commenced and completed within 14 days of the receipt of such notice.

Here, hearing officer alleges that hearing was commenced and completed on 1/13/14 at 3:00 pm on page (1) of said Disposition Thus satisfying the requirement of 7 N.Y.C.R.R. 251.5.1(b). However, on page (2) of disposition Rendered by Hearing Officer D.S.S. Lamanna denotes that said hearing was completed on 1/24/14 thus violating the 14 day time requirement provided in 7 N.Y.C.R.R. 251.5.1(b) and the notice provided by Mr. Prack. My Re hearing proceeding was not completed in a timely fashion according to the (Witness Inmate Notice form) provided by the 110) which states C.O.J. Robinson and C.O. Tillinghast didn't testify until 1/24/14 making it past the 14 day requirement. The record would not reflect any Extension granted in this proceeding.

In the matter of Bruce Hawkins v. Scully, 536 N.Y.S. 2d 846, 146 A.D. 2d 627, (N.Y. A.D. 2d Dept. 1989) The Supreme Court appellate Division held that: Rehearing was not held within applicable time period, and charges against Inmate had to be dismissed. See DeJalmer v. Scully, 110 A.D. 2d 671, 487 N.Y.S. 2d 461; Lozada v. Scully, 168 A.D. 2d 859, 185 N.Y.S. 2d 571 and Grosvenor v. Delsheim, 90 A.D. 2d 1135, 114 N.Y.S. 2d 533).



### Conclusion

Please take into consideration the harsh and excessive penalties imposed, the accumulative and repetitive violations of Due Process and the many contradictions of the reports relied upon and testimony given by prison officials. I was deprived of a full and fair hearing and impartial (H.O.) pursuant to 7 N.Y.C.R.R. § 253.1(b). By way of behavior dispute of a colorable claim of innocence in all proceedings regarding his matter, a full and fair reversal and expungement should be upheld & a high level of review. please listen to the Tape recording of my superintendent's hearing and rectify me of your Decision.

Respectfully Submitted,  
 1211 Markus King #12A1132  
 Saethport C.F.P.O. Box 3000  
 Pine City, N.Y. 14571-2000  
 2/11/14

EXHIBIT  
G

(1st Appeal)

## **Prisoners' Legal Services of New York**

Karen L. Murtagh  
**Executive Director**

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Ithaca, New York 14850  
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Betsy Hutchings  
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Elizabeth Watkins Price  
Melissa Loomis  
Kristina Moon  
**Staff Attorney**

January 2, 2014

Albert Prack, Director of Inmate Discipline  
New York State Department of Corrections  
and Community Supervision  
Building #2, State Campus  
Albany, New York 12226

**Re: Marcus King, # 12-A-1122**

Dear Mr. Prack:

On October 10, 2013, Officer Tillinghast issued a misbehavior report against Marcus King, charging him with weapons possession and smuggling. Officer Tillinghast stated that while performing a strip search on Mr. King, he observed a white package containing a ceramic razor and a green leafy substance in Mr. King's rectal area. That same day, Officer Robinson wrote a second misbehavior report charging Mr. King with drug possession, and stated that the green leafy substance tested positive for marijuana.

At his Tier III disciplinary hearing, Mr. King pled not guilty to all charges and stated in his defense that the charges were made in retaliation for a previous altercation Mr. King had had with Officer Tillinghast earlier that month. Mr. King called two inmate witnesses, Inmate Bell and Inmate Chambliss to testify in support of his retaliation defense. When the hearing officer called Inmate Bell, Mr. King requested that Hearing Officer Tanea question him regarding Mr. King's previous altercation with Officer Tillinghast. Hearing Officer Tanea failed to pose any questions regarding the prior altercation to Inmate Bell. Hearing Officer Tanea denied Mr. King's request to call Inmate Chambliss, denominating Chambliss as a redundant witness who was not near the location of the incident.

Hearing Officer Tanea called Officers Tillinghast and Robinson to testify at the hearing. Although Officer Robinson's testimony can be heard on the hearing tape, Officer Tillinghast's testimony appears not to have been recorded. Mr. King later objected to Hearing Officer Tanea's refusal to allow him to question Officer Tillinghast about the prior altercation and his

possibly retaliatory submission of a false misbehavior report, questions that were relevant to his defense.

Hearing Officer Tanea found Mr. King guilty of all charges and sentenced him to twelve months in SHU. Hearing Officer Tanea stated in his written disposition that he based his determination in part on Officer Tillinghast's verbal testimony. Superintendent Wenderlich later modified Mr. King's penalty to nine months in SHU.

I request that you reverse the disposition against Mr. King because a critical portion of the hearing was not recorded,<sup>1</sup> and because Hearing Officer Tanea violated Mr. King's right to present witness testimony and to present a defense.

I. It is impossible to conduct a meaningful review of Mr. King's appeal, as vital portions of the hearing are absent from the hearing tape

According to Department of Corrections and Community Supervision regulations, a disciplinary hearing must be recorded in its entirety. 7 NYCRR 254.6(a)(2). The purpose of electronic recording is to permit review of disciplinary hearings by a higher authority. Matter of Berrios v. Kuhlman, 143 A.D.2d 475, 477 (3d Dep't 1988). Minor or sporadic gaps in hearing tapes that do not preclude meaningful review do not warrant reversal. Matter of Wilson v. Coombe, 237 A.D.2d 831, 832 (3d Dep't 1997). However, if a hearing is not recorded in its entirety, and the disposition relies on the unrecorded portions of testimony, the hearing must be reversed. See Matter of Scott v. Coughlin, 161 Misc.2d 777 (Supreme Court, Dutchess Co. 1994) (reversing and expunging a disciplinary hearing where confidential testimony was cut off after only two minutes, and the hearing officer relied on the confidential testimony to reach his disposition).

The tape recording provided to PLS in response to our FOIL request is missing at least Officer Tillinghast's testimony and shows that Mr. King's hearing was not recorded in its entirety. Hearing Officer Tanea relied on Officer Tillinghast's testimony to reach his disposition against Mr. King. Thus, a critical evidentiary basis for Hearing Officer Tanea's determination of guilt was not preserved.

In addition, Mr. King objected that he was unable to question Officer Tillinghast regarding matters relevant to his defense, and the deficiencies in the hearing recording make it impossible to assess the validity of this objection.

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<sup>1</sup> The hearing tape supplied to PLS, labeled 13-449, abruptly cuts off on Side A during a discussion between Hearing Officer Tanea and Mr. King regarding the availability of the log books on the day of the strip search. The tape resumes on Side B with Hearing Officer Tanea stating that when the hearing last adjourned, Mr. King requested Sergeant Belz to testify as a witness. Officer Tillinghast's testimony was not on the tape with which we were provided, but is referred to later in the recording, and mentioned in the written disposition. Based on the gap in the recording, and the absence of Officer Tillinghast's testimony, it appears that the hearing was not recorded in its entirety. On January 3, inmate records at Southport Correctional Facility could not confirm whether there was an error in the duplication of the recording tape, or if a section of the tape was actually missing. PLS is not in a position to further investigate this matter, however, if your investigation confirms that the tape recording was deficient, we ask that you reverse the hearing.

The deficiency in the tape recording is neither minor nor sporadic. Rather, the failure to record Officer Tillinghast's testimony – the officer who allegedly found the material later determined to be marijuana – was a basis of Hearing Officer Tanea's determination of guilt and is essential to a meaningful review of the hearing. In light of the failure to record this testimony, Mr. King's Tier III hearing must be reversed.

II. Mr. King was not permitted to provide relevant witness testimony to support his defense of retaliation

Inmates have a constitutional and regulatory right to call witnesses during disciplinary hearings, provided that the witness testimony is material and not redundant. See generally Wolff v. McDonnell, 418 U.S. 539 (1974); 7 NYCRR 254.5. When justified by security concerns, a hearing officer may interview a witness outside of the accused's presence, and permit the accused to submit questions for the witness and review the taped testimony. 7 NYCRR 254.5(b). When relevant, an inmate should be permitted to call witnesses in support of a retaliation defense. See, e.g., Matter of DeBoue v. Fischer, 968 N.Y.S.2d 260 (3d Dep't 2013); Matter of Lopez v. Fischer, 952 NYS2d 694 (3d Dep't 2012).

To support his retaliation defense, Mr. King asked Hearing Officer Tanea to question Inmate Bell regarding the previous altercation between Mr. King and Officer Tillinghast. Hearing Officer Tanea instead questioned Inmate Bell about the strip search incident, which Inmate Bell did not witness. Mr. King later asked Hearing Officer Tanea to question Inmate Chambliss regarding the prior incident with Officer Tillinghast. Hearing Officer Tanea refused to call Inmate Chambliss, and stated on the hearing record form that the witness was redundant, and was not present during the strip search.

Hearing Officer Tanea failed to ask Inmate Bell any of Mr. King's questions regarding the previous altercation with Officer Tillinghast. Hearing Officer Tanea questioned Inmate Bell solely about matters unrelated to the purpose for which Mr. King sought his testimony, and effectively deprived Mr. King of his right to present witnesses and fatally impaired his right to present a defense.

Furthermore, Hearing Officer Tanea erred in characterizing Inmate Chambliss's testimony as redundant. Mr. King requested Inmate Chambliss's testimony in order to present information in support of Mr. King's retaliation defense. Other than Mr. King's statement, no evidence of this nature had yet been submitted for the record. This is an especially grievous error, given Hearing Officer Tanea's failure to present Mr. King's questions regarding his retaliation defense to Inmate Bell. Hearing Officer Tanea's refusal to call Inmate Chambliss based on redundancy therefore violated Mr. King's right to call witnesses on his behalf and undermined Mr. King's presentation of his defense.

I request that you reverse the disposition against Mr. King due to Hearing Officer Tanea's failure to record a significant portion of Mr. King's hearing, including the testimony of Officer Tillinghast, upon which Hearing Officer Tanea relied to reach his disposition. Additionally, I request that you reverse the hearing based on the hearing officer's failure to allow Mr. King



either to elicit testimony from Inmate Bell relevant to his retaliation defense or to call Inmate Chambliss to support his retaliation defense.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Loomis', with a stylized, cursive script.

Melissa Loomis

## Prisoners' Legal Services of New York

Karen L. Murtagh  
**Executive Director**

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Elizabeth Watkins Price  
Melissa Loomis  
Kristina Moon  
**Staff Attorney**

April 2, 2014

Albert Prack, Director of Inmate Discipline  
New York State Department of Corrections  
and Community Supervision  
Building #2, State Campus  
Albany, New York 12226

COPY

**Re: Marcus King, # 12-A-1122**

Dear Mr. Prack:

On October 10, 2013, Officer Tillinghast issued a misbehavior report against Mr. King, charging him with weapons possession and smuggling, and Officer Robinson wrote a second misbehavior report charging Mr. King with drug possession. Hearing Officer Tanea found Mr. King guilty of all charges and sentenced him to nine months in SHU. On January 9, 2014, you ordered a rehearing to be completed within fourteen days.

Hearing Officer Lamanna began Mr. King's rehearing by stating that Sergeant Speights, the hearing escort officer, had informed him that Mr. King refused to come to the hearing, and asked the he be given the disposition when the hearing concluded. Sergeant Speights later testified that Mr. King refused to come to the hearing, and refused to sign the refusal form. Sergeant Speights never stated whether she informed Mr. King that the hearing would take place in his absence, and Hearing Officer Lamanna never questioned whether Sergeant Speights had imparted this information to him. Mr. King contends that he was not aware that the hearing had begun, and that he would have attended had he been given the opportunity.

Officer Tillinghast testified that during a strip frisk, he found a ceramic object on Mr. King's person, and that he considered the ceramic object to be a weapon. Mr. King denies that he was ever in possession of this object. The object in question is one and half inches long, only three-eighths of an inch wide, and in the shape of a trapezoid.<sup>1</sup> Officer Tillinghast stated that the

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<sup>1</sup> For your reference, I have attached the photo of the ceramic object, and have attached a prototype of the object to demonstrate the object's true size.

object was wrapped in paper and tape, and he believed the paper and tape had been formed into a “holster” and “handle.”

Hearing Officer Lamanna found Mr. King guilty of all charges and sentenced him to eight months in SHU and recommended a six-month loss of good time. I request that you reverse the disposition against Mr. King, as Hearing Officer Lamanna violated Mr. King’s right to attend the hearing. I further request that you dismiss the weapons possession charge, as it is not supported by substantial evidence.

I. Hearing Officer Lamanna violated Mr. King’s right to be present

Inmates possess both a federal due process right and a state regulatory right to be present at a prison disciplinary hearing. Wolff v. McDonnell, 418 U.S. 539 (1974); Title 7 NYCRR § 254.6(a)(2). There must be evidence in the record to show that an inmate’s refusal to attend is knowing, voluntary, and intelligent. Pagan v. Goord, 298 A.D.2d 735 (3d Dep’t 2002). If an inmate allegedly refuses to attend the hearing, the record must demonstrate that the inmate was informed of his right to attend the hearing and the consequences of failing to appear. Tafari v. Selsky, 836 N.Y.S.2d 206 (3d Dep’t 2007).

Sergeant Speights testified that Mr. King refused to come to the hearing, and refused to sign the refusal form, but did not testify that she informed Mr. King that the hearing would take place in his absence, and that he could be found guilty. Mr. King contends that he was not aware that the hearing had taken place, and that he would have attended had he known the hearing had commenced. Given Mr. King’s contention, Sergeant Speights and Hearing Officer Lamanna’s failure to fully inform Mr. King of his right to attend and the consequences of failing to appear was an exceptionally serious mistake.

I request that you reverse the disposition against Mr. King, as Hearing Officer Lamanna failed to ensure that Mr. King was aware that if failed to attend, the hearing would take place in his absence, and therefore violated his right to be present at the hearing.

II. The weapons possession charge is not supported by substantial evidence

The determination that a prisoner is guilty of misbehavior must be supported by substantial evidence. See Matter of Bryant v. Coughlin, 77 N.Y.2d 642 (1991). That is, the evidence must “constitute the type of relevant proof that a reasonable mind would accept as adequate to support the determination at issue.” Matter of Hemphill v Selsky, 808 N.Y.S.2d 503 (3d Dep’t 2006). To be found guilty of a weapons possession charge, an inmate must be found in possession of “an instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing bodily harm.” 7 N.Y.C.R.R. § 270.2. See also, Matter of Green v Goord, 807 N.Y.S.2d 729 (3d Dep’t 2006) (finding that an inmate could not be found guilty of a weapons charge for throwing hot water).

Officer Tillinghast testified that he found a ceramic weapon on Mr. King's person.<sup>2</sup> He failed to mention, however, that this alleged weapon was a mere inch and half long, three-eighths of an inch wide, and was in the shape of a blunt trapezoid. The "weapon" in question is no larger than a standard size paper clip, and clearly not "readily capable of causing bodily harm." The ceramic object therefore does not "constitute the type of relevant proof that reasonable mind would accept as adequate" to support a weapons possession violation.

Officer Tillinghast overreached by classifying a small ceramic object as a weapon and using this as a basis to charge Mr. King with weapons possession. The weapons charge is not supported by substantial evidence, and therefore must be dismissed.

#### Conclusion

I request that you reverse all charges against Mr. King, as Hearing Officer Lamanna violated his right to attend the hearing. I further request that you reverse the weapons charge against Mr. King, as this charge is not supported by substantial evidence.

Sincerely yours,

Melissa Loomis

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<sup>2</sup> Mr. King contends he was never in possession of this object. I do not concede that Mr. King possessed this object; only that assuming Officer Tillinghast did find such an object, that this object could not be considered a weapon.

EXHIBIT

7



**KING, MARKUS**  
**Southport Correctional Facility**

**DIN: 12-A-1122**  
**Case#: 13-It- 002593**

**Issue: 403-Complaints re: guard**

**Status: Closed**  
**Intake: 10/23/2013**  
**Opened: 10/23/2013**  
**Closed: 10/23/2013**

**Office:** Ithaca  
**Unit:** (not specified)  
**Handler:** Hutchings, Betsy  
**Closer:** Hutchings, Betsy

**US Citizen**  
**SS#:** - -  
**Sex:** Male  
**DOB:** 11/03/1986  
**Lang:** Unknown  
**Ethn:** African American

**ISSUE:**

403-Complaints re: guard  
**At:** Southport Correctional Facility  
**Unit:** (none specified)

**NOTES:**

MK writes that on 10/10/13 he was physically and sexually assaulted by guards at SP after he had been escorted from his cell for a shower. He was told to kick off his shower shoes and face the back wall of the shower, he was punched on the back, ribs, head, and side of his face, following which his face was slammed into the wall, breaking one of his teeth, ordered to remove his underwear, and told to bend forward, whereupon O Tillinghast performed a body cavity search. He was then put in an contraband watch cell for 7 days.

MK got a MR for possession of drugs and weapons concealed between MK's buttocks (that was the basis of the strip frisk, according to the report), drug use (based on urinalysis testing), and smuggling.

With respect to the use of force, bc there were no serious injuries, we sent Use of Force & Self Help materials.

We will offer assistance with the Tier III if the penalty is sufficiently serious under another case number.

**STATUS INFORMATION:**

**Problem:** 403-Complaints re: guard  
**Disposition:** No PLS Disposition  
**Major Impact:** NO  
**Citizenship Attest:** Not on file  
**Retainer agreement:** Not on file  
**Funding Source:** New York State  
**Referred by:** NOT SPECIFIED

EXHIBIT

I

Markus King 12A1122  
da-8 10-20-13

RECEIVED

OCT 24 2013

57471

SOUTHPORT GRIEVANCE

(Inmate Grievance program)

On or about 10-10-13 approximately 9:30 AM On C-block 3rd Floor Eleven Gallery where I was housed on the above date and time, I was being Escorted Outside Myself to take a scheduled shower. upon my arrival at the shower I was Ordered by C.O Tallinghast, Officer Kelly and Other unknown Officers to step inside the shower. I then Complied and as I entered the shower I was Followed by C.O Tallinghast & C.O Kelly while other unknown prison Officials; Officers and unknown Sgt was present inside shower door way, I was ordered by C.O Tallinghast to Kick my slippers off & walk bare foot on the cold, Filthy Shower Floor to the back of the shower wall with my Face in the Corner and Not to Move. Suddenly I was Viciously and unlawfully Attacked with Forceful blunt blows to my back, ribs, head, side of my face & I was grabbed by the back of my Neck & he rammed my face into the ~~back~~ shower wall chipping and disfiguring my Top right tooth asking me "Didn't I tell you I was going to come back?" "Say something New". I was then held by C.O Kelly who assisted C.O Tallinghast in the attack & I was Ordered to Lift my Leg up one at a time so that my underwear can be removed by Officers while I was still Mechanically Restrained with handcuffs to the rear. at this time I was told to bend while being assisted by officers to a 90° angle. I Complied out of fear for my well-being, risk of further injury and because I was Likely to be Charged & Convicted of Disciplinary Offenses or New Crimes. I stated repeatedly "I didn't do anything and I don't have anything". I was then told if I Make Any sudden Movements that I will be "Dunged" & If I said another word he (C.O Tallinghast) said "I'll Lie & say you Kicked me in the balls and that'll make things really worst for you". Officer Tallinghast began to perform a Body Cavity Search

OCT 24 2013

SOUTHPORT GRISWOLD

With his Fingers? Forcefully Shaking them inside my Rectal Cavity  
Which it is Consistent with his MBR document Fabricating that I was  
in Possession of a Weapon and green Leafy Substance in which he Stated on  
his Report; "While Conducting a pat Frisk of Inmate King (2A1132), I Felt an  
unusual bulge in the inmate's recta area". I was then ordered to Lift my  
Leg up one at a time so these Officers can put my underwear back on.  
I was then placed in a waist chain? shackles and Escorted off C-11  
gallery in my underwear from the shower (see C-11 gallery recreation video).  
I was placed in a Contraband Watch room for 7 days where my Fecal Matter?  
Bodily Fluids were searched with Negative results. I later learned through  
C.O Tallinghast who sexually assaulted? abused me that I was being  
charged with a weapon? drugs. Later by this same officer I was asked  
to provide urine in which I received a MBR for Positive results of  
Marijuana in which my urine sample was Tampered with. At any event I  
being charged Twice or (2) Separate MBR's for same incident which is  
Double Jeopardy. I received a MBR for weapons possession and another for  
a green Leafy Substance in which according to C.O Tallinghast's MBR that  
"Allegedly" both items were Found on my person. A Restraint Order  
prepared by Sgt Belz stated Marijuana was Found in my cell which  
Contradicts C.O Tallinghast's MBR Document. Due to this Traumatic  
Event I am a victim of Not only Sexual assault, but a Violent assault  
and sexual abuse. I have No sense of Dignity, I have been Mortified,  
Violated, humiliated, I am in Fright, Shock and I'm very Embarrassed to  
Even make this Report but I am in total Fear for my Life, Safety and Well-being  
in this Facility because all above mentioned prison Officials in this Grievance  
has a reputation of "settling Inmates up", being unprofessional, Wreckless,  
abusive, Careless and Very Dangerous. I'm requesting that I be seen by Medical  
to Document my injuries and During all and any strip Frisk procedures  
that a health Care provider be present, and that I also be Transferred

OCT 23 2013

SOUTHPORT GRIEVANCE

To another Facility For My safety. I will also like for it to be Noted that I am Severely subjected to reprisals; retaliation, Sexual abuse, and Sexual harassment For Filing this Complaint with I.G.R.C.

I am also requesting a full investigation in this Matter, also requesting to be removed from this area because the above mentioned Officer is a steady in d-block. I Fear that my Property, Mail and Food will be taken away!

Respectfully Submitted,

Markus King 12A1122

da-8 10/20/13

cc: File

Family

Inspector General

Governors Office

P.L.S



EXHIBIT

J

SOUTHPORT

TAPE NUMBER

13-449

DIN: 12A1122 NAME: KING, MARCUS

LOCATION: 00-0A-008

INCIDENT DATE &amp; TIME: 10/10/13 11:15 AM TIER 3

REVIEW DATE: 10/16/13 BY: LT DONAHUE

DELIVERY DATE &amp; TIME: 10/17/13 08:46 AM BY: CO DILDINE

HEARING START DATE &amp; TIME: 10/24/13 10:20 am BY: DSP Tanea

HEARING END DATE &amp; TIME: 11/1/13 1:00 PM BY: DSP Tanea

WAS THERE NEED FOR A FORMAL MENTAL HEALTH/INTELLECTUAL CAPACITY ASSESSMENT? Y / 8

CHARGE NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	DISPOSITION
113.10	WEAPON	CO TILLINGHAST	G
114.10	SMUGGLING		G
113.25	DRUG POSSESSION	CO ROBINSON	G

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE(\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE.

PENALTY CODE	DESCRIPTION	PENALTY MO DAYS	START DATE	RELEASE DATE	SUSPEND MO DAYS	DEFERRED MO DAYS	RESTITUTION \$\$\$\$
A000	SHU	12	11/1/13	11/1/14			
D000	LOSS Rec	12	11/1/13	11/1/14			
E000	LOSS Pack	12	11/1/13	11/1/14			
F000	LOSS COMM	12	11/1/13	11/1/14			
L000	VISITATION	6 mon	11/1/13	5/1/13			

DIN: 12A1122 NAME: KING, MARCUS

HEARING DATE: 11/1/13

## A. STATEMENT OF EVIDENCE RELIED UPON:

Written Reports Submitted by C.O. Tillinghast and C.O. Robinson, which I found to be credible, supports the charges contained in the Report.

C.O. Tillinghast testified that he saw a bugle in your Rectal area, he searched and retrieved a bundle which had green leafy material, also found a ceramic razor type weapon. C.O. Robinson stated he tested the green leafy material and it was Marijuana. Your witness did not present any evidence to support your plea of GUILTY. Your only defense was you were set up.

## B. REASONS FOR DISPOSITION:

Disposition intended to send a clear message to this inmate and others confined to this facility that smuggling weapons and drugs will not be tolerated. This type of behavior threatens the safety and security of both inmates and staff. Your past disciplinary history was considered when giving this disposition.

## C. SPECIAL INSTRUCTION ON CORRESPONDENCE RESTRICTIONS AND REFERRALS

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION DATED: 11/1/13

①. 2  
HEARING OFFICER SIGNATURE

Restraints  
INMATE SIGNATURE

11/1/13 10PM  
DATE & TIME RECEIVED

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

\_\_\_ FOR TIER II HEARINGS--APPEAL TO SUPERINTENDENT WITHIN 72 HOURS.

X FOR TIER III HEARINGS--APPEAL TO COMMISSIONER WITHIN 30 DAYS.

DIN: 12A1122 NAME: KING, MARCUS

HEARING DATE: 11/1/13

VISITOR NAME		RELATIONSHIP		LAST VISIT		VISITS PRIOR YR	
PENALTY	PENCODE	MO DAY	START DATE	RELEASE DATE	SUSPEND	DEFERRED	
ALL NO VISITS: NONCONTACT:	6000	6 00	11 / 1 / 13	5 / 1 / 13	2		
HUGHES, BIANCA C			FRIEND	07/20/2013	3		
NO VISITS: NONCONTACT:							
JACKSON, TIA A			FRIEND	07/20/2013	1		
NO VISITS: NONCONTACT:							
LARMONIE, TRACY R			FRIEND	08/19/2012	1		
NO VISITS: NONCONTACT:							
NO VISITS: NONCONTACT:							
NO VISITS: NONCONTACT:							
NO VISITS: NONCONTACT:							

EXHIBIT

K



**WITNESS INTERVIEW NOTICE** (For Superintendent's & Disciplinary Hearings)

## Correctional Facility

King, Marcus  
Inmate Name (Print)

12A1122  
DIN#

Reference: Directive #4932, Sections 253.5 and 254.5.

Requested witness: Meadows, W 12A3129

- Date: 10/30/13 Explanation: SHU Facility inmate not able to attend hearing, Hearing Officer was given Questions to ask by King, M 12A1122, he then asked witness and played back to King the testimony at hearing.

\*\*\*\*\*

Requested witness: Bell, A. 02R4363

- Date: 10/30/13 Explanation: SHU Facility inmate not able to attend hearing. Hearing Officer was given questions to ask by King. M 12A1122, he then asked witness and played back to King the testimony at Hearing.

\*\*\*\*\*

C-11-20 Chamblis  
Requested witness: 47B 3968

- Date: 10/31/13 Explanation: His testimony is redundant, not  
near the location of incident

Signature A. J.  
Hearing Officer

Restraints

12A1122  
DIN

11/1/13  
Date Received

EXHIBIT  
L

## Inmate Employee Assistance

C-11 Recreation Camera 9:45 10/10

#1148 Form

Requesting Log Book of 9<sup>45</sup> of 10/10

C.O. Robinson (Witness)

C.O. Tillinghast (Witness)

Inmate Bell, D 21 cell c/u

Inmate Jose Fuentes 18 cell c/u

Photos of Weapon &amp; Leafy Substance

Unusual Incident Report

Copy of Contraband Receipt for cell (19) c/u

All To/Froms

Use of Force

\* All Documents Generated Relating To MERS (copies of all Restraint orders issued regarding Incident \*

\* Recreation Log Book of c/u gallery of October 1<sup>st</sup> to show I've Requested Recreation and Log-in and Entry of C.O. Tillinghast To show Rec was his Post of 10/1/13 of C-block \*

\* Interview of the inmates who occupied c/u on 10/10 \*

for Markes King 12A1122  
A-7-11

None

~~Given~~ Given already  
Given (Already Has)

Hearing

A-4-6 034363<sup>R</sup>

AT Hearing

Given previous

Given previous

Given previous

No

MOR

VI

NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES  
SOUTHPORT CORRECTIONAL FACILITYASSISTANT FORM

RECEIVED

JAN 14 2014

TO: SS [signature]1/13/14  
COMPLETE NO LATER THAN  
CLOSE OF BUSINESSDISCIPLINE OFFICE  
ASSISTANT RET'D

FROM: DISCIPLINE OFFICE

You have been selected to assist inmate:

KING, MURKINS, DIN # 1241122, Cell: A 1-11in a pending Tier 3 Misbehavior Report dated: 1/10/14

Pursuant to Section 251.2 of Chapter V, your role is to ensure that the inmate understands the charges, interview potential witnesses identified by the inmate and report the results of your efforts to the inmate. You may also be requested to obtain relevant documentary evidence to assist in the preparation of the inmate's defense to the charges.

To Be Completed By Assistant:I initially met with this inmate on this date: 1/14/14 at this time: 9:30 am  
He requested the following named inmate(s) to be interviewed as potential witnesses:

Inmate Name	DIN	Location	Agrees to Testify	
<u>Deil, D</u>	<u>0324263</u>		Yes	<u>No</u>
			Yes	No
			Yes	No
			Yes	No
			Yes	No

He requested the following names person(s) to be interviewed as potential witnesses:

CO Robinson  
CO T. J. SmithOther Requests: None

Action Taken: \_\_\_\_\_

To Be Completed At Conclusion Of Assistance:

I have interviewed witnesses and assisted as requested and reported the results to the inmate charged.

<u>[Signature]</u> Assistant's Signature	<u>1/14/14</u> Date	<u>1:20 pm</u> Time
<u>[Signature]</u> Inmate's Signature	<u>1/14/14</u> Date	<u>1:30 pm</u> Time

DO NOT  
COPY

Witnessed By (Inmate refused to sign)

Date

Time

13

## Tier Assistance Selection Form

In accordance with the provisions in 7NYCRR, Part 251 C of Chapter V, the inmate is entitled to select from an established list of staff designated as Assistants. The Assistant will provide the inmate assistance as outlined in Directive 4932, 251-4.2, in connection with charges of misbehavior filed against inmate:

KINDY, MARCOS 12 A 1122 on 10/12/13

\*\*\*\*\*

Inmate MUST CHOOSE **THREE** (3) names from the list below, **NUMBERING** them in the order of his preference.

(Mark 1, 2, 3)

<u>   </u> <del>D. Hall</del>	<u>   </u> T. Hourihan	<u>   </u> <u>2</u> D. Chapman
<u>   </u> <del>J. Ayers</del>	<u>   </u> K. McFall	<u>   </u> D. Dundas
<u>   </u> <del>S. [redacted]</del>	<u>   </u> <del>T. Hamrah</del>	<u>   </u> D. Butler
<u>   </u> A. Cleary	<u>   </u> N. Sampsell	<u>   </u> B. Curren
<u>   </u> J. Johnson	<u>   </u> <del>D. Liddick</del>	<u>   </u> J. Shope
<u>   </u> <del>T. Richards</del>	<u>   </u> <del>[redacted]</del>	<u>   </u> <del>R. Abrams</del>
<u>   </u> <del>G. H. [redacted]</del>	<u>   </u> M. McGrain	<u>   </u> <del>E. Morales</del>
<u>   </u> <del>E. Bartlett</del>	<u>   </u> <u>3</u> W. Harris	<u>   </u> A. Pedalty
<u>   </u> <del>M. Charron</del>	<u>   </u> <del>J. Looney</del>	<u>   </u> H. Liebson
<u>   </u> <del>[redacted]</del>	<u>   </u> R. Sheldon	<u>   </u> M. Speights
<u>   </u> E. Delaney	<u>   </u> W. Harris	<u>   </u> <u>1</u> J. Dick
<u>   </u> S. Neal	<u>   </u> M. Wood	<u>   </u>

    R. Portalatin (Only for documented Non-English speaking Spanish inmates)

\*\*\*\*\*

- ( ☒ ) The inmate did receive a copy of his report.
- ( ☐ ) The inmate did receive a copy of all required drug testing forms (if applicable).
- ( ☒ ) The inmate did / did not request a copy of Chapter V. (Given on: \_\_\_\_\_ Date & Time)
- ( ☐ ) No assistance is required (TIER II Misbehavior Report).
- ( ☐ ) The inmate wishes to choose an Assistant. (Ensure that **THREE** (3) selections are made.)
- ( ☐ ) The inmate waives his right to an Assistant.
- ( ☐ ) The inmate requests a Spanish Assistant and / or Interpreter since he is Monolingual.

DO NOT  
COPY

Inmate's Signature:  Date: 10/12/13

Officer's Signature:  Date: 10/12/13

14



EXHIBIT  
M

FORM 2186-SPT - RENEWAL (2/02)

STATE OF NEW YORK

DEPARTMENT OF CORRECTIONAL SERVICES

SOUTHPORT CORRECTIONAL FACILITY

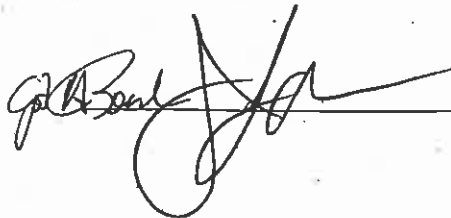
REF: 7 NYCRR 305.4

## RESTRAINT ORDER - RENEWAL

R E C O M M E N D A T I O N	I recommend that inmate <u>King</u> DIN <u>12A1122</u> Cell location <u>D-A-8</u>		
	be placed on a restraint order from <u>10/28/13</u> to <u>11/3/13</u> because of the following reasons:		
	<u>MBR 10/10/13 113.10, 114.10, 113.25</u>		
	<u>Weapon on person, Marijuana in cell</u>		
And to hinder this inmate from perpetrating further acts of violence against staff and to minimize the inmates ability to cause any injury to staff, other inmates, or to himself.			
I recommend <input checked="" type="checkbox"/> Do not recommend <input type="checkbox"/> that this inmate be required to remain in restraints in accordance with 7 NYCRR 305.4 (e)(5).			
Types of restraints and manner of application will be: <u>Handcuffs-Behind Back</u> , <u>Waist Chain</u> , and <u>Leg Restraints</u> .			
<u>W. Harris</u> Sergeant <u>10/26/13</u> Date			

## Renewal Authorization

NOTICE TO INMATE: You may write to the Deputy Superintendent for Security or his/her designee to make a statement as to the need for continuing this restraint order.



Dep. Supt for Security

10/28/13

Date

FORM 1140 (3/00)

Ref: Dir #4910

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES  
REPORT OF STRIP SEARCH OR STRIP FRISK

DATE: 10-10-13

TIME 11:15

INMATE NAME: KING, M

DIN#: 12A1122

FRISK LOCATION: C11 SHOWER #3

BASIS OF SEARCH/FRISK: GIVE REASONS DURING PAT FRISK FELT UNUSAL BUGLE IN RECTAL

☒ PROBABLE CAUSE  
OTHER

AREA

TYPE OF SEARCH

☐ STRIP SEARCH  
☒ STRIP FRISK

AUTHORIZED BY

SCT BELZ

SIGNATURE

Sgt. A. R. [Signature]

NAME/RANK OF PERSON(S) CONDUCTING FRISK:

1) CO L. Tillinghast

2)

- If Other Staff are Present, List Name/Rank, and Explain Why Their Presence was Necessary and Who Authorized Their Presence:

RESULTS OF SEARCH GREEN LEAFY MATERIAL : CERAMIC RAZOR TYPE WEAPON

WAS FORCE REQUIRED TO COMPLETE THE SEARCH? ☐ YES ☒ NO

SIGNATURE

[Signature]

Orig. IRC (Inmate File) cc: Captain (Retain 1 Yr.) cc: DSS

FORM #2077 (Rev. 8/01)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

## CONTRABAND RECEIPT

DATE/TIME 10/10/13 @ 11:15 AM  
LOCATION C-11-19

SOUTHPORT

CORRECTIONAL FACILITY

Original - Inmate  
Copy - D.S.S.

INMATE NAME: KING

DIN 12A1122

OFFICER CONDUCTING SEARCH

SIGNATURE

R. Thwaill

PRINT NAME

R. Thwaill

☒ NO CONTRABAND FOUND☒ NO PROPERTY DAMAGED DURING SEARCH

ITEMS CONFISCATED OR DAMAGED

WHERE FOUND

COMMENTS

NCF

NDD

DO NOT

DISPOSITION OF ITEMS LISTED

PERSON RECEIVING ITEMS

SIGNATURE

PRINT NAME

YOU MAY WRITE TO THE DEPUTY SUPERINTENDENT FOR SECURITY WITHIN 7 DAYS  
OF THIS RECEIPT REGARDING THE CONFISCATION OR DISPOSITION OF THESE ITEMS.

9

EXHIBIT  
N

Tour II 7x3 10/10/13

Tape #  
14-023

943

11-19 King 12A 1122 moved  
to D-Block 11-21 moved to D-C-25 11-19 - D-M-33  
escort Sgt Beltr, CO Tillinghost, Miller, Sandbrook,  
Thall, Renbelling



Exhibit  
D

DATE: January 15, 2014

TO: ~~LT. DONAHUE~~

FROM: S. J. Wenderlich, Superintendent

RE: DESIGNATION TO CONDUCT TIER III HEARING PROCEEDING IN THE CASE OF:

**KING, MARCUS - 12-A-1122**  
Inmate's Name and DIN Number

Pursuant to Title 7, Chapter V, Section 254.1, the Superintendent may, if sufficient reason exist, designate personnel to conduct Tier III Proceedings on his behalf.

To date the following personnel have been so designated:

Deputy Superintendents (or their reliefs)  
Captains (or their reliefs)  
Civilian Hearing Officer from Central Office

In addition to the above designation, I am hereby designating other facility personnel to conduct such proceedings when the volume of pending cases is such to warrant assistance; namely Correction Lieutenants and Institution Stewards. Their designation however, will be restricted to specifically assigned cases.

In accordance with the above statements, and to ensure a timely completion of the Tier III Proceedings in the case of **KING, MARCUS - 12-A-1122** you are hereby designated to conduct said hearing.

S. Wenderlich  
Superintendent or Designee

1-15-14  
Date

On 1/24/14 a Tier III hearing was held on the above named inmate by the above named hearing officer:

The following was the disposition:

8 months SHU  
8 Loss of Priv  
8 Loss of Comm  
8 Loss of phone  
3 months loss of all visits  
6 months rec- loss of bed time

**DO NOT  
COPY**

Hearing Reviewed By: S. Wenderlich  
Superintendent or Designee

Date: 1-28-14

19

## SOUTHPORT CORRECTIONAL FACILITY

### DISCIPLINE OFFICE

#### MEMORANDUM

TO: Hearing Officer ISS (HMMV)

FROM: Discipline Office

RE: Inmate Name: Kings, M

DIN No: 12A1122 Cell: A-7-11

Incident Date: 1/10/13 Time: 11:15

DATE: 1-24-14

Inmate: Please sign below to acknowledge receipt of the following documents pertaining to the above incident:

<input type="checkbox"/>	Unusual Incident
<input type="checkbox"/>	Use of Force
<input type="checkbox"/>	To/Froms
<input type="checkbox"/>	Log Book Entries
<input checked="" type="checkbox"/>	Hearing Disposition
<input checked="" type="checkbox"/>	Witness Interview Form(s) #2176
<input type="checkbox"/>	Hearing Extension
<input checked="" type="checkbox"/>	Appeal Form #2178A
<input type="checkbox"/>	Other - Specified Document _____
	_____
	_____

Roll to sign

Inmate's Signature

12A1122

DIN No.

1-24-14

Date

130

Time

R. Angstrom

Serving Officer's Signature

HEARING OFFICER: TO BE PLACED IN HEARING PACKET

DO NOT  
COPY

15

Exhibit  
P

DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

THE HARRIMAN STATE CAMPUS - BUILDING 2

1220 WASHINGTON AVENUE

ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI  
ACTING COMMISSIONER

JOSEPH BELLNIER  
DEPUTY COMMISSIONER  
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: KING, MARCUS

NO. 12A1122

HEARING FACILITY: SOUTHPORT

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT  
LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF  
NOVEMBER 1, 2013, HAS BEEN REVIEWED AND REVERSED ON JANUARY 9, 2014.

COMMENCE AND COMPLETE REHEARING WITHIN 14 DAYS OF RECEIPT OF THIS  
NOTICE.

ALBERT PRACK

DIRECTOR, SPECIAL HOUSING/  
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT  
CENTRAL OFFICE FILES  
M. LOOMIS, ITHACA PLS

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND  
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL  
HOUSING/INMATE DISCIPLINE PROGRAM.

DO NOT  
COPY

17



DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
THE HARRIMAN STATE CAMPUS - BUILDING 2  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI  
ACTING COMMISSIONER

JOSEPH BELLNIER  
DEPUTY COMMISSIONER  
CORRECTIONAL FACILITIES

M E M O R A N D U M

TO: SUPERINTENDENT STEPHEN J WENDERLICH  
SOUTHPORT CORRECTIONAL FACILITY

FROM: ALBERT PRACK, DIRECTOR  
SPECIAL HOUSING/INMATE DISCIPLINE

DATE: JANUARY 9, 2014

RE: REVERSAL OF SUPERINTENDENT'S HEARING

<u>INMATE/NUMBER</u>	<u>DATE OF HEARING</u>	<u>DATE OF INCIDENT</u>
KING, MARCUS #12A1122	NOVEMBER 1, 2013 BY TANEA @ SOUTHPORT C.F.	OCTOBER 10, 2013

THE ABOVE-NOTED SUPERINTENDENT'S HEARING HAS BEEN REVERSED AND A REHEARING ORDERED ON JANUARY 9, 2014, FOR THE FOLLOWING REASON(S):

FAILURE TO MAINTAIN A COMPLETE ELECTRONIC RECORD  
(CO TILLINGHAUST TESTIMONY). COMMENCE AND COMPLETE REHEARING WITHIN  
14 DAYS OF RECEIPT OF THIS NOTICE.

PLEASE DO NOT HESITATE TO SHARE THIS INFORMATION WITH THE HEARING  
OFFICER WHO CONDUCTED THE HEARING OR ANY OTHER APPROPRIATE STAFF MEMBER.

DO NOT  
COPY

18

Exhibit  
D

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

**WITNESS INTERVIEW NOTICE** (For Superintendent's & Disciplinary Hearings)

Southold Correctional Facility

King, Marcus  
Inmate Name (Print)

12A 1122  
DIN#

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

CO Robinson  
Requested witness:

- ☐ Permission to call the requested witness is denied.  
☒ Requested witness will testify outside inmate's presence.  
☐ Inmate is not permitted to review requested witness's testimony.

Date: 1/24/14

Explanation: Officer Robinson testified outside inmate's presence because inmate refused to attend hearing - author of report

\*\*\*\*\*  
CO Tulloughast  
Requested witness:

- ☐ Permission to call the requested witness is denied.  
☒ Requested witness will testify outside inmate's presence.  
☐ Inmate is not permitted to review requested witness's testimony.

Date: 1/24/14

Explanation: Officer Tulloughast testified outside inmate's presence because inmate refused to attend hearing - author of report

\*\*\*\*\*  
Sgt Spragles  
Requested witness:

- ☐ Permission to call the requested witness is denied.  
☒ Requested witness will testify outside inmate's presence.  
☐ Inmate is not permitted to review requested witness's testimony.

Date: 1/23/14

Explanation: Testified that inmate refused to attend the hearing via phone -

Signature

[Signature]  
Hearing Officer

[Signature]  
Inmate

[Signature]  
DIN

1/24/14  
Date Received

Distribution: Original - Hearing Record Copy - Inmate

**DO NOT  
COPY**

16

Exhibit  
R

REVIEW OFFICER LT JANTRY  
 REVIEW DATE 01/10/14 TIER 3  
 C.R. DATE 03/02/2022 M.E. DATE 04/24/2024

1) NAME KING, MARCUS DIN 12A1122 LOCATION OA-07--011  
 2) INCIDENT DATE 10/10/13 INCIDENT TIME 11:15 AM  
 3) INMATE WAS NOT CONFINED  
 4) INMATE RELEASED AT REVIEW  
 5A) SERVING OFFICER B. COON SERVING DATE/TIME 1/10/14 : 2:15 PM  
 5B) RELEASED FROM PREHEARING CONFINEMENT? N/A  
 AUTHORIZED PERSON N/A DATE AUTHORIZED N/A  
 6) ASSISTANT NAME Sgt. Chapman  
 7) INTERVIEW DATE 1/14/14 INTERVIEW TIME 9:30 AM  
 8) EXTENSION NUMBER 14 BL 0429 (IF APPLICABLE)  
 9) IF APPLICABLE, CHECK REQUIRED DRUG TESTING FORMS PROVIDED TO INMATE  
 PURSUANT TO DIRECTIVE 4937 OR 4938  
 TEST REQUEST FORMS ☒ TEST PROCEDURE FORMS ☒  
 TEST RESULT FORMS ☒ APPENDIX C ☒ OTHER (SPECIFY) \_\_\_\_\_  
 10) INMATE IS ENGLISH SPEAKING  
 A) IF NOT, WERE CHARGES TRANSLATED AND SERVED TO INMATE? N/A  
 B) INTERPRETOR AT HEARING N/A  
 11) HEARING BEGIN: DATE 1/23/14 TIME 12:00 PM END: DATE 1/24/14 TIME 3:00 PM  
 12) CHARGES: SPECIFY INMATE'S PLEA TO THE CHARGES CONSIDERED AT THE HEARING

CHARGE NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	INMATE'S PLEA
113.25	DRUG POSSESSION	CO J ROBINSON	<u>N.G.</u>
113.10	WEAPON	CO L. TILLINGHAST	<u>N.G.</u>
114.10	SMUGGLING	CO L. TILLINGHAST	<u>N.G.</u>

SIGNATURE OF INMATE

DATE

TIME

13) WITNESSES: IF NONE REQUESTED, CHECK HERE

A) REQUESTED BY INMATE

TESTIFIED

IN INMATE'S PRESENCE

Bell 03R4563  
CO Robinson  
CO Tillinghast

Y ☒ N ☒  
 Y ☒ N ☒  
 Y ☒ N ☒  
 Y ☒ N ☒

Y ☒ N ☒  
 Y ☒ N ☒  
 Y ☒ N ☒  
 Y ☒ N ☒

B) REQUESTED BY HEARING OFFICER

TESTIFIED

IN INMATE'S PRESENCE

Sgt. Speights  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Y ☒ N ☒  
 Y ☒ N ☒  
 Y ☒ N ☒  
 Y ☒ N ☒

Y ☒ N ☒  
 Y ☒ N ☒  
 Y ☒ N ☒  
 Y ☒ N ☒

\*NOTE\* IF ANY WITNESS IS DENIED OR IF A REQUESTED WITNESS TESTIFIES OUTSIDE THE PRESENCE OF THE INMATE CHARGED, AND/OR THE INMATE IS NOT PERMITTED TO REVIEW TESTIMONY OF SUCH WITNESS, FORM 2176 EXPLAINING THE REASON FOR THAT DETERMINATION MUST BE GIVEN TO THE INMATE AND INCLUDED AS PART OF THE RECORD.

HEARING OFFICER SIGNATURE

DO NOT  
 COPY

\*\*\*SUCCESSFUL PRINT COMPLETION\*\*



STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES  
SOUTHPORT CORRECTIONAL FACILITY  
SUPERINTENDENT HEARING DISPOSITION RENDERED

DIN: 12A1122

NAME: KING, MARCUS

HEARING DATE: 1/24/13

A. STATEMENT OF EVIDENCE RELIED UPON:

The written report and testimony of Officers Tillinghast and Robinson. Upon being pat frisked, Officer Tillinghast felt a bulge in your rectal area. A strip frisk was then authorized and conducted by Officer Tillinghast. During the frisk the Officer did observe that you had a white package between your buttocks. Officer Tillinghast ordered you to hand the package to him and you complied. In the package was green leafy substance that Officer Robinson tested and found it to be positive for marijuana .2 grams.. Also in the package was a razor type weapon (ceramic) wrapped in paper and tape that was constructed as a holster and handle. That weapon measured 1.5" long x 3/8" wide. UI # 13-0056 was reviewed and considered during this hearing. You stated to Sergeant Speights that you were not going to attend the hearing and gave no reason why. You did state to just deliver the disposition when complete. I did go to your cell and you still refused to testify and come out for this hearing.

B. REASON FOR DISPOSITION:

To deter you and all others from this behavior. Possessing any contraband and attempting to smuggle that contraband is a serious offense. In this case you possessed marijuana and a ceramic weapon. In your short time incarcerated you have had 6 serious T-3 misbehavior reports 3 drug charges, 2 weapons charges and one gang charge. Other dispositions have not produced the desired effect to change your behavior therefore a more significant sanction will be imposed as a result. If this type of behavior continues, or similar serious misbehaviors like this one continue a more severe penalty can be imposed. This Hearing Officer has the obligation to protect all staff and inmates from your violent behavior therefore significant SHU time is warranted

C. SPECIAL INSTRUCTION ON VISITATION OR CORRESPONDENCE RESTRICTIONS, REFERRALS OR SPECIAL EVENT LOSS:

3 months loss of all visits from all visitors.

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION DATED:

HEARING OFFICER SIGNATURE

INMATE SIGNATURE

DATE &amp; TIME RECEIVED

January 24, 2014

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

\_\_\_\_ FOR TIER II HEARING-APPEAL TO SUPERINTENDENT WITHIN 72 HOURS.

DO NOT  
COPY

3

X FOR TIER III HEARING-APPEAL TO COMMISSIONER WITHIN 30 DAYS.

SOUTHPORT

TAPE NUMBER 14-023

DIN: 12A1122 NAME: KING, MARCUS

LOCATION: 0A-07-011

INCIDENT DATE & TIME: 10/10/13 11:15 AM TIER 3

REVIEW DATE: 01/10/14 BY: LT GANTERT

DELIVERY DATE & TIME: 01/10/14 02:15 PM BY: CO COON

HEARING START DATE & TIME: 1/23/2014 12:00 PM BY: DSS LAMANNA

HEARING END DATE & TIME: 1/23/2014 2:00 PM BY: DSS LAMANNA

WAS THERE NEED FOR A FORMAL MENTAL HEALTH/INTELLECTUAL CAPACITY ASSESSMENT? Y / N

CHARGE NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	DISPOSITION
113.10	WEAPON	CO L. TILLINGHAST	<u>G</u>
114.10	SMUGGLING		<u>G</u>
113.25	DRUG POSSESSION	CO J ROBINSON	<u>G</u>

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE(\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE.

PENALTY CODE	DESCRIPTION	PENALTY MO DAYS	START DATE	RELEASE DATE	SUSPEND MO DAYS	DEFERRED MO DAYS	RESTITUTION \$\$\$ . 11
<u>H-000</u>	<u>SHU</u>	<u>8</u>	<u>2/17/14</u>	<u>10/17/14</u>			
<u>D-000</u>	<u>LOSS OF PRIV</u>	<u>8</u>					
<u>P-000</u>	<u>LOSS OF PRIV</u>	<u>8</u>	<u>3/15/14</u>	<u>11/15/14</u>			
<u>F-000</u>	<u>LOSS OF COMM</u>	<u>8</u>	<u>3/15/14</u>	<u>11/15/14</u>			
<u>G-000</u>	<u>LOSS OF PRIV</u>	<u>8</u>	<u>3/15/14</u>	<u>11/15/14</u>			
<u>L-000</u>	<u>LOSS OF ALL VISITS</u>	<u>3 months</u>					
<u>H-000</u>	<u>Rec - loss of good time</u>	<u>6 months</u>					

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S

NEW YORK STATE  
DEPARTMENT OF CORRECTIONAL SERVICES

Southern CORRECTIONAL FACILITY

REQUESTED INMATE WITNESS REFUSAL TO TESTIFY  
IN TIER II/TIER III DISCIPLINARY HEARING

I, KING, M, hereby refuse to testify  
NAME DIN  
on behalf of KING, M, in his/her Tier II/Tier III  
NAME DIN  
hearing for a misbehavior report of \_\_\_\_\_ for the following  
DATE  
reason(s). Circle number that applies and give specific reason for refusing to testify.

1. I do not want to be involved (explain) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. I do not know enough about specific incident to provide relevant  
testimony (explain) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Other (specify reason) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Refused to Sign  
SIGNATURE

1/23/14  
DATE

EMPLOYEE SIGNATURE

DATE

\*\*\*\*\*

I specifically asked King, M 12A1122 to provide a reason for his/her refusal to  
testify and he/she refused to provide further information.

M. Speights, SGT  
EMPLOYEE SIGNATURE

1/23/14  
DATE

DO NOT  
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x E. Taylor

6

Exhibit

T



FORM 3105A (7/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

## AMBULATORY HEALTH RECORD PROGRESS NOTE

Name	King, Marcus	DIN	DA1122	Date of Birth	11-3-86	Facility Name	Southport
Subjective:	AMSC			Last Name	King		
Objective:	Requesting to see the doctor.			DIN	DA1122	Location	DA8
Assessment:	C10 HA and back pain x2 weeks and motion not working.			Date	10/27/13	Time	AMSC
Plan:	A+O x3, gait stable. Adls normal.			Provider Orders:	VBP Cont Motion		
TO MD/PA for review							
Signature/Provider # <u>[Signature]</u> RN Transcribing Order/Provider #/Date/Time _____							
Subjective:	Block Call Out			Last Name	King		
Objective:	wgt: 210 — 10/10/13 - C block			DIN	DA1122	Location	DA8
Assessment:	BP 146/88 — Allegedly called to shower			Date	10/28/13	Time	10:30 AM
Plan:	— beaten by 2 CO's			Provider Orders:			
	— "bend over @ 90° angle"						
	— "chipped tooth"						
Signature/Provider # <u>[Signature]</u> RN Transcribing Order/Provider #/Date/Time _____							
Subjective:	- CO's put finger in rectum cavity"			Last Name			
Objective:	- "took underwear off"			DIN		Location	
Assessment:	Exam: no indication of recent or old trauma			Date	10/28/13	Time	
Plan:	No need for outside ED unit.			Provider Orders:			
Signature/Provider # <u>[Signature]</u> RN Transcribing Order/Provider #/Date/Time _____							

Continue entry into next box if necessary.

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FORM 3105A (7/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

## AMBULATORY HEALTH RECORD PROGRESS NOTE

Name	<u>King, Marcus</u>	DIN	<u>12A1122</u>	Date of Birth	<u>11/3/86</u>	Facility Name	<u>630</u>
Subjective:	<u>my dental visit</u> <u>my dental etc</u> <u>for crown pt 4/14</u>			Last Name _____			
Objective:				DIN _____ Location <u>DA 5</u>			
Assessment:	<u>no really a change of</u> <u>mouth</u>			Date <u>11/13/13</u> Time <u>11</u>			
Plan:	<u>dental ref</u> →			Provider Orders: <u>glucol</u>			
Signature/Provider # <u>MK</u> RN Transcribing Order/Provider #/Date/Time _____							

Subjective:	<u>Old back pain x 1 month - 12/13</u> <u>was referred - strap sitting</u> <u>precisely and sometimes check with</u>			Last Name <u>KING, MARCUS</u>			
Objective:	<u>movement -</u> <u>Old man with holding</u>			DIN <u>12A1122</u> Location <u>DA 5</u>			
Assessment:	<u>looking at back of feet</u> <u>check under - to be done</u>			Date <u>11/21/13</u> Time <u>11:00</u>			
Plan:	<u>unmade would like to see on 12/13</u> <u>incident 11/21/13 - see by MD</u> <u>only motion out of the foot</u>			Provider Orders: <u>Discontinue HC</u> <u>Ray - LS sponge</u> <u>WKC108</u> <u>11-22-13</u>			
Signature/Provider # <u>STANLEY H. H. H.</u> RN Transcribing Order/Provider #/Date/Time _____							

Subjective:	<u>40 skin problem on feet.</u>			Last Name <u>KING</u>			
Objective:	<u>Requesting Dental Care.</u>			DIN <u>12A1122</u> Location <u>D-8</u>			
Assessment:	<u>NAD</u>			Date <u>12/5/13</u> Time <u>11:00</u>			
Plan:	<u>Given AFC for feet</u> <u>Dental protocol followed for dental care.</u>			Provider Orders: <u>AFC #3</u>			
Signature/Provider # <u>St Stanley H. H. H.</u> RN Transcribing Order/Provider #/Date/Time _____							

Continue entry into next box if necessary.

FORM 3105A (7-11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
AMBULATORY HEALTH RECORD PROGRESS NOTE

Name <u>King</u>	DIN <u>12A 1122</u>	Date of Birth <u>11/3/86</u>	Facility Name <u>680</u>
Subjective: <u>See 3/12/14.</u>	Last Name _____		
<u>- up pain forearm to</u>	DIN _____ Location <u>A 83</u>		
Objective: <u>hand, R side.</u>	Date <u>5/6/14</u> Time _____		
Assessment:	Provider Orders:		
<u>• (R) hand Dom, 90 weakness, but no motion of ADL deficit</u>			
Plan:	<u>• States he did use flycarril, see refills appears to have been compliant, little relief</u>		
	<u>• Hx (R) middle finger motion. States (R)</u>		
Signature/Provider # <u>M. W. L. - 255</u>	RN Transcribing Order/Provider #/Date/Time _____		
Subjective: <u>hand dominant.</u>	Last Name <u>Continued</u>		
	DIN <u>12A 1122</u> Location _____		
Objective:	Date <u>5/6/14</u> Time _____		
Assessment:	Provider Orders:		
<u>• States OTC motion P helpful but would be willing to try other NSAID.</u>			
Plan:	<u>Please advise</u>		
Signature/Provider # <u>M. W. L. - 255</u>	RN Transcribing Order/Provider #/Date/Time _____		
Subjective: <u>AD Headaches - and Back pain</u>	Last Name <u>King</u>		
<u>discrete on middle out to</u>	DIN <u>12A 1122</u> Location <u>B9-3</u>		
Objective:	Date <u>06/19/14</u> Time <u>amoc</u>		
Assessment:	Provider Orders:		
	<u>1) motion OTC # 100 INSTRUCTIONS</u>		
	<u>coordinate with</u>		
Plan:	<u>2) HAND OTC # 100 INSTRUCTIONS</u>		
<u>OTC 4. discrete MD collect</u>			
<u>following per SICK call</u>			
Signature/Provider # <u>Stanley PS LINT #190</u>	RN Transcribing Order/Provider #/Date/Time _____		

Continue entry into next box if necessary.

FORM 3105A (7-11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
AMBULATORY HEALTH RECORD PROGRESS NOTE

Name <u>King, Marcus</u>	DIN <u>12A1122</u>	Date of Birth <u>11/3/86</u>	Facility Name <u>SP</u>
-----------------------------	-----------------------	---------------------------------	----------------------------

Subjective: c/o HA on rt side of head.Last Name KING, MARCUSDIN 12A1122Location B9-3Objective: ? sinus/allergyDate 5-25-14Time AAssessment: no unusual signs of distress

Provider Orders:

CTM -Plan: did req. to go out to recreation  
monSignature/Provider # KW 25 RN Transcribing Order/Provider #/Date/Time \_\_\_\_\_

Subjective:

Last Name \_\_\_\_\_

DIN \_\_\_\_\_ Location \_\_\_\_\_

Objective:

Date \_\_\_\_\_ Time \_\_\_\_\_

Provider Orders:

Assessment:

Plan:

Signature/Provider # \_\_\_\_\_ RN Transcribing Order/Provider #/Date/Time \_\_\_\_\_

Subjective:

Last Name \_\_\_\_\_

DIN \_\_\_\_\_ Location \_\_\_\_\_

Objective:

Date \_\_\_\_\_ Time \_\_\_\_\_

Provider Orders:

Assessment:

Plan:

Signature/Provider # \_\_\_\_\_ RN Transcribing Order/Provider #/Date/Time \_\_\_\_\_

Continue entry into next box if necessary.



Exhibit

V

# ArnotHealth

## Radiology Services

12/18

Arnot Ogden Medical Center  
600 Roe Avenue  
Elmira, NY 14905

St. Josephs Hospital  
555 St Joseph's boulevard  
Elmira, NY 14904

Ira Davenport Memorial Hospital  
7571 State Route 54  
Bath, NY 14810

Troy Radiology Services  
45 Mud Creek Road  
Troy, PA 16947

12/11/22

DB-19

Printed - 12/12/2013 6:59:44AM

### REPORT OF RADIOLOGY SERVICE

Page 1

**Patient:** KING, MARCUS  
**MRN:** 563480  
**DOB:** 11/03/1986

**Location:** PREO **Bed:**  
**Ordering MD:** Canfield, Wesley

<u>Exam Date</u>	<u>Accession #</u>	<u>Procedure/Reason For Study</u>
12/11/2013	10437855	Lumbar Spine / pain

### \*\*\* Final Report \*\*\*

Study: AP and lateral views of the lumbar spine 1045 hours 12/11/2013 comparison studies none.

HISTORY: Pain.

FINDINGS: No fracture, subluxation, or significant disc space narrowing.

Signing Radiologist: Taylor MD, Thomas (ARFL) 12/11/2013 2:07PM Dictated on: 2013/12/11 14:07:02.13

Referring MD: Canfield, Wesley  
Attending MD: Canfield, Wesley  
Admitting MD: Canfield, Wesley

REVIEWED BY (init.) Bw / 12/18/13 DATE

- ☒ NO ACTION IS REQUIRED AT THIS TIME  
☐ REPORT TO SICK CALL  
☐ FOLLOW UP WILL BE ARRANGED WITH A PRIMARY PROVIDER  
☐ FOLLOW UP WILL BE ARRANGED WITH A SPECIALIST  
☐ NOTIFICATION FORM COMPLETED AND DISTRIBUTED



Exhibit  
W

NEW YORK STATE  
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
THE HARRIMAN STATE CAMPUS - BUILDING 2  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI  
ACTING COMMISSIONER

JOSEPH BELLNIER  
DEPUTY COMMISSIONER  
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: KING, MARCUS

NO. 12A1122

HEARING FACILITY: SOUTHPORT

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT  
LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF  
JANUARY 23, 2014, HAS BEEN REVIEWED AND AFFIRMED ON APRIL 8, 2014.

*Ithaca Regional Office  
Prosecutors' Legal Services Unit*

APR 11 2014

ALBERT PRACK  
DIRECTOR, SPECIAL HOUSING/  
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT  
CENTRAL OFFICE FILES  
M. LOOMIS, PLS ITHACA

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND  
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL  
HOUSING/INMATE DISCIPLINE PROGRAM.



Exhibit  
5

H. "Body Cavity Search": (See Division of Health Services Policy Manual, Item Number 1.37, "Body Cavity Searches," Attachment E)

1. Definition: A body cavity search means a physical examination of an inmate's anal and/or genital cavities by a Physician.

2. Authorization:

- a. Single inmate: A body cavity search may not be performed except upon the explicit authorization of the Superintendent, Acting Superintendent, or Facility Officer of the Day.

The Superintendent, Acting Superintendent, or Facility Officer of the Day shall not authorize a body cavity search without having first been advised of all circumstances and will base the decision upon evaluation of those circumstances, with particular consideration of the intrusiveness of a body cavity search after consultation with a Central Office Physician. A body cavity search shall be conducted by a Facility Physician under Central Office Physician guidance.

- b. More than one inmate: In instances when a body cavity search is requested or suggested for more than one inmate in a single incident, the Superintendent, Acting Superintendent, or the Facility Officer of the Day must gain authorization from the Deputy Commissioner for Correctional Facilities or, during non-business hours, the Departmental Officer of the Day.

- c. The Deputy Commissioner for Correctional Facilities or the Departmental Officer of the Day shall not authorize a body cavity search without having first been advised of all circumstances and will base the decision on evaluation of those circumstances, with particular consideration of:

- (1) The intrusiveness of a body cavity search,
      - (2) The number of inmates to be searched,
      - (3) The imminence and seriousness of the danger of the contraband,
      - (4) The likelihood that the contraband was secreted in the body cavities and has not been disposed of, and
      - (5) The possible use of less intrusive searches, to either discover the contraband or a narrowing of the group to be searched.

3. Application: A body cavity search may be authorized only in circumstances where there are compelling reasons to believe that the inmate or inmates to be searched have secreted contraband in a rectal/vaginal cavity, the nature of which constitutes a clear threat to the safety and security of the facility and/or a threat to the safety and well-being of any person. Compelling reasons are limited to:

- a. ~~A foreign object's presence is indicated by a metal detector but is not visible during a strip frisk;~~
    - b. A foreign object is observed to be present during a strip frisk;
    - c. Intelligence information possessed by facility administration and/or staff indicates the probability of the presence of contraband in the body cavities of the inmate or inmates to be searched; or
    - d. Probable presence of contraband in the body cavities of the inmate or inmates to be searched is indicated by other observations such as unusual gait, indications of discomfort, particularly while walking or sitting, unusual posture, etc.

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4. Procedure

- a. This search shall be conducted in accordance with professional standards and in compliance with the Health Services protocol (see Attachment E) regarding body cavity searches which provides, in pertinent part: This procedure shall be conducted by a Facility Physician under Central Office Physician guidance. The examination must be accomplished in an appropriate examining room using acceptable aseptic techniques for such an exam, i.e., draping, positioning, explanation of the procedure to be performed. One Correction Officer of the same sex as the inmate must be present as a witness.
- b. Prior to conducting a body cavity search, the Physician must explain the process to the inmate and the inmate must be given the opportunity to yield the contraband voluntarily. If the search is for a specific item which is voluntarily yielded, the search shall not continue. Force should not be used to complete a body cavity search.
- c. Every precaution shall be taken to ensure as much privacy as is possible under the circumstances.
- d. On all occasions that a body cavity search is conducted, the incident must be reported, through the unusual incident process under incident type #22, by specifying body cavity search, to the Department's Communication Control Center with the follow-up submission of the required Unusual Incident Report (see Directive #4004, "Unusual Incident Report").

## I. "Radiological Detection Search"

1. Definition: A radiological detection search means an internal search of the inmate's person via the use of equipment such as X-rays.
2. Authorization: A radiological detection search will be performed only with the express authorization of the Superintendent, Acting Superintendent, or Facility Officer of the Day, and only after consultation with the facility's Health Services Director or his or her designee to ensure that such a search will not be injurious to the inmate's health.  

The Superintendent, Acting Superintendent, or Facility Officer of the Day shall not authorize a radiological detection search without having first been advised of all circumstances and will base the decision upon evaluation of those circumstances, with particular consideration given to the sensitivity of a radiological detection search.
3. Application: A radiological detection search may be authorized only in circumstances where there are compelling reasons to believe that the inmate or inmates to be searched have secreted in their bodies contraband, the nature of which constitutes a clear threat to the safety and security of the facility and/or a threat to the safety and well-being of any person.

## J. "Native American Medicine Bag Search"

1. A Native American shall hold his or her medicine bag open for visual inspection by the Correction Officer. If the inmate is not present or if special security concerns exist (e.g. the Native American inmate refuses to open the medicine bag or threatens, assaults or attempts to assault staff or other inmates; or the inmate or the medicine bag pose a threat to the safety and security of the facility), then the medicine bag may be held open by the Chaplain. If the Chaplain is not available, the bag shall be secured by the Correction Officer in an area designated by the Deputy Superintendent for Security until the Chaplain is present. If exigent circumstances exist, however, the Superintendent may authorize the search of a bag without a Chaplain, provided a Lieutenant or higher ranking Officer is present when the bag is opened for visual inspection.
2. A medicine bag may be scanned at any time with a metal or other electronic detector.
3. The contents of a medicine bag may be tested for illegal substances if contraband is suspected, pursuant to the provisions of Directive #4938, "Contraband Drug Testing."

EXHIBIT

Z

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES  
DENTAL TREATMENT RECORDName: KING, MARCUSDIN: 12A1122

DATE (MO/DAY/YR)	TOOTH NUMBER	ADA Class	DIAGNOSTIC - TREATMENT - REMARKS	DENTIST SIGNATURE
APR 25 2012			RECORD REVIEW-ATTICA C.F.	J. R. CORTESE, DDS
JUL 24 2012			TRANSFERRED FROM ATTICA C.F.	
7/30/12			ARRIVED AT SOUTHPORT RT	LISA HAYTH, R.D.H.
7/30/12		II	Records Review	R.J. HAAG, DMD
2/19/13			TRANSFERRED FROM SOUTHPORT	LISA HAYTH, R.D.H.
2/26/13			ARRIVED GREAT MEADOW C.F.	S. JAMES
2/28/13			CHART REVIEW	DENTAL ASSISTANT
4/9/13			ARRIVED AT SOUTHPORT	HARI M. IYER, DDS
4/9/13		II	Records Review	LISA HAYTH, R.D.H.
7-1-13			Health / History Update	R.J. HAAG, DMD
			Cavities / Scale / Polish	
			Supra / Sub gingival	
			all lower legions - OHI	
11/20/13	PO	II	Quar na @ parking	LISA HAYTH, R.D.H.
	9	I	Exsm, Perio 2200 HC X420	2 : 100 X / 1200
	2		I - Antetch Flowable A2	Just ant
			O - Antetch Flowable A2	↓ ↓
12/30/13		II	Exsm, Perio 2200 2 BWR 011	R.J. HAAG, DMD
		I	Impression filling list	R.J. HAAG, DMD
1/2/14			Health / History Update	
			Cavities / Scale / Polish	
			Supra / Sub gingival OHI	
6/23/14	PO	II	Quar na @ parking	LISA HAYTH, R.D.H.
	18	I	Exsm, Perio 2200 X420 C 1/100 X2 cups	011
	18		O - dy col smu	
	19		O - dy col smu	R.J. HAAG, DMD
7/2/14			Health / History Update	
			Cavities / Scale / Polish	
			Slight Supra - OHI	
	PO	I	Quar na @ parking	LISA HAYTH, R.D.H.

United States District Court  
Western District of New York  
Markus King #12A1122  
Plaintiff,

Against  
Stephen Wenderlich, et al;  
Defendants.

-CV-  
Certificate  
of  
Service

I, Markus King, does hereby affirm under the penalties of perjury pursuant to 28 U.S.C. § 1740 The following to be true and Accurate:

[1.] I mailed by placing in U.S. Postal mail box: (i). Affirmed Verified Complaint, (ii). appendix with attached Exhibits, (iii). Memorandum of Law, and (iv). Disputed Material facts

Original To: Clerk, U.S. District Court  
Western District Court house  
100 State Street  
Rochester, N.Y. 14614

Copy To: Debra A. Martin, Assistant Attorney General  
144 Exchange BLVD  
Rochester, N.Y. 14601

Respectfully Submitted,

Dated: August 11, 2014  
One city, N.Y. 14871

Markus King  
- Signature -